77-1269

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. [redacted]

GENERAL ATOMIC COMPANY,
Petitioner,

v.

THE HONORABLE EDWIN L. FELTER, JUDGE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW MEXICO

HOWREY & SIMON
1730 Pennsylvania Ave., N.W.
Washington, D.C. 20006

MILLER, CASSIDY, LARROCA
& LEWIN
2555 M Street, N.W.
Washington, D.C. 20037

RODEY, DICKASON, SLOAN, AKIN
& ROBB, P.A.
P. O. Box 1888
Albuquerque, New Mexico 87103

MONTGOMERY, ANDREWS
& HANNAHS
P. O. Box 2307
Santa Fe, New Mexico 87501

Of Counsel

DAVID C. MURCHISON
JOHN BODNER, JR.
NATHAN LEWIN
LAWRENCE R. VELVEL

Attorneys for Petitioner

WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D.C. 20001

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW MEXICO

The petitioner, General Atomic Company ("GAC"), respectfully supplements its petitions for writs of certiorari and mandamus filed March 3, 1978, and prays that a writ of certiorari issue to review (a) the order of the Supreme Court of New Mexico entered at approximately 1:30 p.m. on March 2, 1978, denying petitioner's application for Original Mandamus and Prohibition, and (b) the entry of the resulting Sanctions Order and Default Judgment, filed at approximately 2:00 p.m. on the same day by the District Court for the First Judicial District of Santa Fe County, New Mexico (Hon. Edwin L. Felter).

OPINIONS BELOW

The order of the Supreme Court of New Mexico issued on March 2, 1978, is not reported, but is reproduced in the

accompanying Appendix A at 1a. The Sanctions Order and Default Judgment entered one-half hour thereafter by the Hon. Edwin L. Felter is not reported, but is reproduced in the accompanying Appendix B at 2a.

JURISDICTION

The decision of the Supreme Court of New Mexico on petitioner's application for Original Mandamus and Prohibition was entered on March 2, 1978. Jurisdiction of this Court to review that order rests upon 28 U.S.C. § 1257(3). *See, e.g., Madruga* v. *Superior Court*, 346 U.S. 556 (1954); *Fisher* v. *District Court*, 424 U.S. 382 (1976). In the unusual circumstances presented here, jurisdiction of this Court to review the final aspects of the order of the District Court for the First Judicial District of Santa Fe County [1] entered on March 2, 1978, immediately following and pursuant to the ruling of the New Mexico Supreme Court, rests upon 28 U.S.C. § 1651 (common-law writ of certiorari) as well as upon 28 U.S.C. § 1257, as hereinafter appears.

QUESTION PRESENTED

Whether the New Mexico Supreme Court should have prohibited a trial judge, who had unconstitutionally precluded petitioner for over twenty months from litigating disputed issues in federal arbitration proceedings and

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[1] The District Court's Order of March 2 implements Judge Felter's prior rulings that information and documents located in Canada in the possession of a non-party Canadian corporation must be identified, disclosed and produced, and his unlawful preclusion of the right of GAC to seek federal arbitration. These are matters which are independent of, anterior to and separate from the merits of this case, and are therefore final within the meaning of the jurisdictional statutes. *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949). As pointed out, *infra*, at 11, there is no intention here to seek review of errors which must first be reviewed in the New Mexico appellate courts.

federal courts, from rushing a case to judgment by precipitously terminating a trial and, without any evidentiary hearing, entering against petitioner a default judgment which contained enormously consequential findings of fact and was based upon petitioner's inability, because of Canadian criminal law, to secure identification, production, or disclosure of documents and information located in Canada in the possession of a non-party Canadian corporation.

STATUTES INVOLVED

The Atomic Control Act of Canada, Can. Rev. Stat. ch. A-19 (1970), is set forth in the accompanying Appendix O at 76a.

The Canadian Uranium Information Securities Regulations, Stat. O.&R. 76-644 (P.C. 1976-2368), is set forth in the accompanying Appendix P at 86a.

The Ontario Business Records Protection Act, Ont. Rev. Stat., ch. 54 §§ 1-3 (1950), is set forth in the accompanying Appendix Q at 87a.

Section 37 of the New Mexico Rules of Civil Procedure, N.M. Civ. R. 37, is set forth in its entirety in the accompanying Appendix S at 90a.

STATEMENT

1. Introduction

This petition is a companion to *General Atomic Co.* v. *Felter*, No. 77-1236, and *General Atomic Co.* v. *Felter*, No. 77-1237. It is being filed to bring before this Court, for its remedial action, the latest in a series of rulings, issued by the courts of New Mexico, which individually and collectively amount ot a massive denial of rights guaranteed by the Constitution and by accepted standards of fairness in adjudication. The orders which are the subject of this petition were issued on March 2, 1978,

when the printer's proofs for the petitions previously filed were in their final stages. The orders of March 2 were, accordingly, discussed in petitioner's application for stay, filed on March 3 and now pending before the full Court as No. A-747 Misc.; but they were not incorporated in the printed petitions filed on that date, except for a brief reference at p. 7, n.11 of the Petition for Certiorari. For reasons set out herein, we believe that review of the latest actions of the New Mexico courts is within the jurisdiction of this Court, and that such actions demonstrate, beyond any shadow of doubt, that petitioner—the defendant in the most sizable litigation ever to come before the courts of New Mexico—is the victim of a major and continuous denial of minimal standards of justice and fairness.

2. The Order of the New Mexico Supreme Court Issued on February 1, 1978

GAC's pending petition for certiorari relates to a purported "discovery order," accompanied by the threat of drastic sanctions, issued by Judge Felter on November 18, 1977. *See* Petition for Certiorari, No. 77-1236, p. 8. On January 11, 1978, the New Mexico Supreme Court refused to issue a writ of prohibition to vacate or modify the order. On February 1, 1978, GAC again appeared before the New Mexico Supreme Court, asking it to stay the November 18 order pending the filing and disposition of papers in this Court. GAC pointed out to the New Mexico Supreme Court that the entry of any further order carrying out the drastic sanctions threatened in Judge Felter's ruling of November 18 could have serious and irreparable consequences. At least one member of the New Mexico Supreme Court apparently recognized the validity of this contention. In Appendix N to GAC's pending petition (No. 77-1236, pp. 49a-50a), we have reproduced the exchange during oral argument in which Justice Easley of the New Mexico Supreme Court sug-

gested that the trial judge's proposed findings be made available to counsel, and that review of these findings, in their proposed state, be had in the New Mexico Supreme Court before their formal entry.[2] Consistently with this suggestion, a February 1, 1978 order of the Supreme Court of New Mexico, denying a stay pending filings in this Court, contained a proviso which directed Judge Felter "to allow the parties sufficient time prior to the entry of any order or findings of facts . . . to present to this Court additional motions as may be appropriate."[3] Such preliminary review by the New Mexico Supreme Court would, at the very least, have afforded an opportunity for that tribunal (and, possibly, this Court) to determine whether Judge Felter's implementation of his "discovery order" would exceed his constitutional and jurisdictional bounds.

3. Judge Felter's Reaction to the New Mexico Supreme Court Order

On February 16, 1978, Judge Felter advised the parties, in a formal "Notice," that "[o]n or after March 1, 1978, the Court, in the exercise of its discretion and judgment, will enter such orders, findings, sanctions or judgments . . . as to the Court then appears to be just and lawful." *See* Appendix O to Petition for Certiorari, No. 76-1236, pp. 51a-52a. No proposed findings were disclosed in the "Notice" of February 16. Instead, Judge Felter merely told GAC that it had until February 28 to file papers in the New Mexico Supreme Court to forestall findings which were wholly unknown.

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[2] This same exchange appears as Appendix C to this petition, at 27a.

[3] The full order is reproduced in accompanying Appendix D at 29a, and as Appendix M to GAC's petition No. 77-1236 (pp. 47a-48a).

4. The New Mexico Supreme Court Capitulates

This apparent violation of the earlier order of the New Mexico Supreme Court was the subject of a motion, filed by GAC on February 20, 1978, renewing its application for a writ of mandamus or prohibition. GAC contended that it was entitled to a hearing on proposed findings and sanctions before any were entered.[4] After hearing oral argument on March 1, 1978, the New Mexico Supreme Court took the matter under advisement. On March 2, 1978, it issued an order which denied the application with no explanation. Appendix A, at 1a.

5. Judge Felter Forthwith Enters a Default Judgment

While these matters were pending in the New Mexico Supreme Court, the trial proceeded before Judge Felter. As described in GAC's companion Petition for Writ of Mandamus, No. 77-1237, p. 8, Judge Felter had begun the trial on October 31, 1977, and had continued it from day to day notwithstanding this Court's decision of October 31, 1977, reversing his order prohibiting federal arbitration and federal judicial proceedings. By the end of February, plaintiff United Nuclear Corp. ("UNC") had presented seven of its eight witnesses and was within about two weeks of concluding its case-in-chief.

Judge Felter's "discovery order" of November 18 had directed UNC to serve upon GAC and file with the court proposed findings of fact to be entered because of GAC's inability to secure, produce or identify Canadian documents in the possession of a non-party Canadian corporation, Gulf Minerals Canada, Limited ("GMCL"), a sub-

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[4] Any different interpretation of the order of the New Mexico Supreme Court would render that Court's order meaningless, for that Court had already denied a Petition for Prohibition sought before Judge Felter's findings were known, and therefore the only meaningful interpretation of the State Supreme Court's order was that there should be review of Judge Felter's order after the findings were made available to counsel.

sidiary of Gulf Oil Corporation ("Gulf"), which is one of the constituent partners of GAC. On December 19, 1977, UNC filed four pages of proposed findings and a supporting memorandum of 214 pages. This document was returned *sua sponte* [5] by Judge Felter on January 25, 1978 (Appendix E, at 34a), and both parties were told to submit, simultaneously, proposed findings and briefs by a date later set at February 15. On the day following this simultaneous submission, Judge Felter issued the previously discussed order which announced that he would act on or after March 1 without advance disclosure of any proposed findings.

On February 9 and 10, Indiana & Michigan Electric Company ("I&M") and UNC filed motions respectively seeking dispositive evidentiary sanctions and a default judgment. I&M joined in the motion for a default judgment on February 13. These motions raised for the first time allegations of general bad faith in furnishing information regarding the international marketing arrangement. GAC therefore requested on February 13 that an evidentiary hearing be held at which it could prove its good faith. This motion was vigorously opposed by UNC and I&M, and ultimately was denied by Judge Felter as part of his order of March 2.

On February 15, UNC and I&M filed briefs containing over 150 pages dealing with these charges of general bad faith. GAC's response to these 150 pages was due on February 27, and on February 21 Judge Felter denied GAC's request for an extension of time to file its response to UNC's and I&M's grave charges. GAC did file its response briefs in a timely fashion on February 27 and 28.

On the morning of March 2, 1978, Judge Felter adjourned court for the day at approximately 11:00 a.m.,

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[5] No advance warning was given to GAC, whose attorneys had been doing extensive work for over a month preparing a response to the initial submission.

without giving any warning that entry of a default judgment was imminent. Approximately three hours thereafter—about one-half hour after the New Mexico Supreme Court acted—he issued a 22-page "Sanctions Order and Default Judgment" (Appendix B, at 2a), which sweepingly condemned GAC's conduct during discovery and entered a "judgment by default" on the issue of liability in favor of UNC and I&M. Notwithstanding the default nature of the judgment, the Order also announced, purportedly pursuant to Rule 37 of the New Mexico Rules of Civil Procedure (Appendix S at 90a), twelve findings of fact and law relating to an alleged "international conspiracy and cartel of uranium producers" between 1972 and 1975.[6]

The concluding paragraphs of the Sanctions Order and Default Judgment declared that trial of the case is to continue "upon determination of damages only, and such other matters as may now be appropriate in view of the granting of default judgments herein". (Appendix B at 21a).

6. The "Recitals" in Judge Felter's Order

As we have indicated, no opportunity was provided to GAC to deal with any of the allegations of bad faith in an evidentiary hearing. Judge Felter's "Recitals" and "Findings" were, in fact, mainly adoptions *in haec verba* of UNC's proposals and were completely unjustified on the record before him. A brief review of part of the history of the litigation relevant to the discovery issues is set out in Appendix F, at 36a. This review demonstrates how patently erroneous and unfair are the findings that the lack of production of documents in the possession of Gulf or GMCL constituted bad faith.

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[6] GAC is not a uranium producer. Indeed, uranium mining and milling are expressly excluded from the scope of GAC's activities.

Although Judge Felter's Sanctions Order and Default Judgment contains a number of "Recitals" of general bad faith in the two-year course of discovery in the lawsuit, the "Recitals" are permeated with the same jurisdictionally impermissible actions that rendered the November 18, 1977 order fatally defective. Recital 46, for example, expressly readopts the findings in the November 18 order—attaching and incorporating it by reference—and thus carries forward all of the unconstitutional excesses of that earlier order, including the holding that "[d]eference to the sovereignty and national interest of Canada . . . cannot be accomplished through sacrifice of the sovereignty of New Mexico. . . ." (Appendix B at 23a). Additionally, the Sanctions Order and Default Judgment amplifies the November 18 order's intrusion into foreign affairs and its violation of the "act of state" doctrine by (1) construing the Canadian Regulations to permit identification of documents, notwithstanding communications from the Canadian Government to the contrary (Recital 29; Appendix B at 13a); (2) suggesting that GAC, a mere private party, not a government, should have undertaken "diligent and long-term negotiations" with the Canadian Government (Recitals 32-35; Appendix B at 13a-15a); and (3) adopting twelve substantive findings expressly adjudicating the legality and propriety, under New Mexico law, of the international marketing arrangement. (Appendix B at 17a-21a).

With reference to the question of the Canadian Government's position concerning the disclosure of information or documents located in Canada, Judge Felter dismissed, apparently as too late (Recital 32; Appendix B at 13a-14a), GAC's request of February 22, 1978 that he and all parties attend a meeting in Ottawa to discuss the availability of the Canadian documents with the appropriate Canadian authorities. Although both the judge and UNC refused to attend, such a meeting was held on March 3, 1978. A summary of

the meeting is reproduced in the accompanying Appendix G at 40a. Canadian officials made it clear at that meeting that production or identification of the documents by any direct or indirect means was a crime under Canadian law, which could not be circumvented, and that the Canadian Government viewed the entire matter as a difference among governments to be discussed and resolved totally on a governmental level.[7] Moreover, the Canadian authorities expressed surprise that it could be suggested that documents had been deliberately withheld by being stored in Canada. In their view, the risk was greater that there had been excessive disclosure in violation of Canadian policy via GMCL's contacts with its parent, Gulf.

7. The "Findings" in Judge Felter's Order

The twelve paragraphs of findings of fact and law, which Judge Felter included in his order because of GAC's assertedly "willful and deliberate" failure to comply with discovery rules, concern exclusively the "international conspiracy and cartel of uranium producers." Several of the "Findings" related not to GAC, but to Gulf, which had been deliberately dropped as a party defendant by UNC in order to avoid removal to federal court. *See* Appendix F at 36a. Thus, as just one example of a finding relating to Gulf, purportedly because there was a void in the evidentiary record pertaining to "the international conspiracy and cartel," Judge Felter entered a judicial finding that:

> . . . Gulf refused to supply uranium to GUNF as it had led UNC and GUNF to believe it would do and refused to allow GUNF to purchase uranium on

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[7] The Canadian officials pointed out that government to government discussions were occurring between the United States and Canada, but that these discussions did not contemplate the transmission of the documents held by private companies to the United States.

the open market, thereby breaching any fiduciary duty it may have owed to UNC. (Appendix B at 20a-21a).[8]

GAC was specifically named by Judge Felter as a co-conspirator in the formation of the "international conspiracy and cartel," and by this unsupported finding—again based on the absence of evidence—all alleged wrongs committed by the "cartel" were laid at GAC's door.

8. The Effect of Judge Felter's Order

The press coverage of the trial in the New Mexico courts has been intense, and Judge Felter's order received great attention in *The New York Times*, *The Wall Street Journal*, and *The Washington Post*. See Appendix H at 57a. On March 6, 1978, UNC took out triumphant full-page advertisements in *The Wall Street Journal* and *The New York Times*, setting forth figures indicating that the judge's ruling could augment UNC's revenues by approximately $864 million. *See* Appendix I at 66a.

We previously have noted the impact of this ruling on other pending and possible litigation (*see* Petition for a Writ of Certiorari, No. 77-1236, pp. 17-18, n.12). The judicial finding—albeit by a state trial judge, in the context of a default judgment—that there is liability growing out of a large "international uranium cartel" is obviously an invitation to countless lawsuits and possible harassment, by litigation, of any entities named as "co-conspirators." Moreover, Judge Felter's hasty conclusion of the trial before him may substantially vitiate any effort by GAC to arbitrate against UNC, an effort which already has been precluded for two years by Judge Felter's

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[8] GUNF (Gulf United Nuclear Fuels Corporation) was a corporation owned by Gulf and UNC. Interestingly, this finding regarding GUNF is directly refuted by UNC's own witnesses, who said that Gulf contracted to sell 5.3 million pounds of uranium to GUNF and that GUNF did purchase uranium in the open market. Appendices M and N at 73a-74a).

initial illegal injunction and later illegal stay order barring federal arbitration proceedings. *See* Petition in No. 77-1237.

REASONS FOR GRANTING THE WRIT

Judge Felter's decision of March 2, 1978 contains many erroneous and unjustified findings of fact and law. But this Petition for a Writ of Certiorari does not seek review of those errors which will first have to be reviewed, upon a careful consideration of the full record, in the New Mexico appellate courts. Thus the discussion of some of the facts of this case in Appendix F at 36a, is designed only to demonstrate that the picture painted by Judge Felter in his extraordinarily intemperate and injudicious ruling should not be given the faith and credit ordinarily assigned to the rulings of a trial judge.

Rather than bringing Judge Felter's entire array of errors here, this Petition focuses only on a limited but critical aspect of the proceedings below. Specifically, by permitting Judge Felter to terminate the case in mid-trial on grounds pertaining principally to GAC's inability to obtain identification, production or disclosure of Canadian documents or information in the possession of GMCL, and by permitting Judge Felter to enter a default judgment without prior disclosure of his proposed findings of fact and law, the New Mexico Supreme Court aggravated the constitutional violations discussed in GAC's pending Petitions in No. 77-1236 and No. 77-1237.

1. The New Mexico Supreme Court's ruling which permitted Judge Felter to proceed as he did, together with the order Judge Felter issued one half hour later, bring to fruition Judge Felter's repudiation of this Court's decision of October 31, 1977—a repudiation which is the subject of GAC's Petition for Mandamus. Having blocked GAC from access to federal courts and federal

arbitration tribunals for twenty months, having refused to defer proceedings in his court while federal remedies might be sought after this Court's remand, and having again stayed GAC from proceeding with federal arbitration, Judge Felter has now rushed to enter a judgment that, if not set aside, renders moot any potential federal arbitration or federal judicial proceedings against UNC and thereby circumvents this Court's ruling. If Judge Felter had taken the only course proper upon the issuance of this Court's decision—*i.e.*, stayed proceedings in his court until there was an opportunity to raise in federal arbitration proceedings and in federal courts the questions which GAC should have been permitted to raise there twenty months earlier—all issues properly cognizable in federal arbitration or judicial proceedings might have been presented to such federal forums. These would even have included the issues relating to the "international uranium cartel," which might thereby have been presented to the more appropriate forum of a federal court in a case in which all interested parties would have been represented.[9] But instead of taking the proper course, Judge Felter has seized the opportunity, growing out of his own unjustified orders requiring Canadian documents and Canadian information, to enter against GAC the most damaging order he could. The New Mexico Supreme Court should not have permitted him to do so, and his order entered pursuant to the State Supreme Court's authorization should be overturned so that federal arbitration and federal judicial remedies can be effectively pursued.

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[9] The twelve paragraphs of findings in Judge Felter's decision of March 2 rest upon findings that are, to the best of our knowledge, unprecedented in the records of state court litigation: Judge Felter has found that foreign nations and private business entities have engaged in concerted international conduct giving rise to immense civil liabilities. Such a finding concerning international events should be within the exclusive jurisdiction of federal courts and should be made only on affirmative proof, and not on the absence of evidence, which was Judge Felter's basis for decision.

2. The March 2 order aggravates Judge Felter's infringement upon the exclusive powers over foreign affairs vested by the Constitution in the federal government and his violation of the "act of state" doctrine. By requiring disclosure of Canadian information and documents even though compliance would violate the criminal law of Canada,[10] by declaring illegal a marketing arrangement adopted and enforced on Canadian soil by the Canadian Government, and by doing these things over the official protests of the Canadian Government expressing its sovereign national and international policies, Judge Felter transgressed a long line of decisions placing full power over foreign affairs in the federal government and recognizing that courts should not adjudicate the legality of the acts of a foreign nation on its own territory.

3. The March 2 order brings to complete fruition the violation of the Due Process Clause inherent in Judge Felter's order of November 18, and crystallizes the conflict between his November 18 ruling and this Court's decision in *Societe Internationale* v. *Rogers*, 357 U.S. 197 (1958), and the decision of the Tenth Circuit in *In re Westinghouse Elec. Corp. Uranium Contracts Litigation*, 563 F.2d 992 (10th Cir. 1977).

When GAC prepared its Petition for a Writ of Certiorari in No. 77-1236, the precise extent of the sanctions which Judge Felter would impose for nonproduction of GMCL's Canadian documents was unknown. To that extent it might have been argued to be premature to assert that the principle of *Societe Internationale* v. *Rogers*, *supra*, had been violated. But the authorization

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[10] *See* Atomic Energy Control Act of Canada, Can. Rev. Stat., ch. A-19 (1970), Appendix O, at 76a; Canadian Uranium Information Security Regulations, Stat. O. & R. 76-644 (P.C. 1976-2368), Appendix P, at 68a; Ontario Business Records Protection Act, Ont. Rev. Stat., ch. 54, §§ 1-3 (1950), Appendix Q, at 87a, October 25, 1977 letter from Office of Ontario Deputy Attorney General to Canadian counsel, Appendix R, at 89a.

given to Judge Felter by the New Mexico Supreme Court, and Judge Felter's termination of the liability aspects of the trial by default judgment—both occurring on March 2—have ripened GAC's argument beyond any contention of prematurity. It is plain now that Judge Felter is imposing the ultimate sanction—a default judgment—and is adding to it findings of fact that will seriously harm GAC and at least one of its constituent partners in other forums. This remedy conflicts with the *Societe Internationale* decision as well as with the Tenth Circuit's ruling in *In re Westinghouse Elec. Corp. Uranium Contracts Litigation*, 563 F.2d 992 (10th Cir. 1977). This Court said in the *Societe Internationale* case that there are constitutional limitations on the power of courts "to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause." 357 U.S. at 209. Judge Felter provided no such opportunity. Instead he entered a default judgment in a case involving approximately 700 million dollars without even giving GAC a hearing to establish the good faith of its efforts to comply with the discovery rules, much less the kind of hearing on the merits contemplated by *Societe*. The very least the Due Process Clause requires is the kind of procedure initially contemplated by the New Mexico Supreme Court, *i.e.*, a disclosure of the proposed sanctions and a hearing, with appellate review before the sanctions are entered.

4. This Court has jurisdiction to review the order we are now bringing before it. The decision of the New Mexico Supreme Court on GAC's application for mandamus and prohibition is, of course, reviewable under 28 U.S.C § 1257(3). *See* the discussion at pp. 16-17 of GAC's companion Petition for a Writ of Certiorari, No. 77-1236. Judge Felter's subsequent ruling is ancillary to the State Supreme Court's decision and can therefore be reviewed, on the broad constitutional grounds we have asserted, without compelling GAC to request again from the New Mexico Supreme Court the same relief which

that Court has already denied twice—once when it refused a writ of prohibition on January 11, 1978, and again when it refused such a writ on March 2, 1978.

Alternatively, in the unusual circumstances of this case, a common-law writ of certiorari, under 28 U.S.C. § 1651, directly to the trial court would be appropriate. *United States Alkali Export Ass'n.* v. *United States*, 325 U.S. 196, 201-204 (1945). *Compare, e.g., Ex Parte Collett*, 335 U.S. 897 (1948); *Kilpatrick* v. *Texas & So. Pac. Ry.*, 335 U.S. 897 (1948); *Ex Parte Collett*, 337 U.S. 55 (1949); *Kilpatrick* v. *Texas & So. Pac. Ry.*, 337 U.S. 75 (1949).

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

HOWREY & SIMON
1730 Pennsylvania Ave., N.W.
Washington, D.C. 20006

MILLER, CASSIDY, LARROCA
& LEWIN
2555 M Street, N.W.
Washington, D.C. 20037

RODEY, DICKASON, SLOAN, AKIN
& ROBB, P.A.
P. O. Box 1888
Albuquerque, New Mexico 87103

MONTGOMERY, ANDREWS
& HANNAHS
P. O. Box 2307
Santa Fe, New Mexico 87501

Of Counsel

DAVID C. MURCHISON
JOHN BODNER, JR.
NATHAN LEWIN
LAWRENCE R. VELVEL

Attorneys for Petitioner

Dated: March 15, 1978

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APPENDIX A

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Thursday, March 2, 1978

No. 11,777

STATE OF NEW MEXICO, *ex rel.*
GENERAL ATOMIC COMPANY,
Petitioner,

vs.

HON. EDWIN L. FELTER,
Respondent.

Original Mandamus and Prohibition Under Power of Superintending Control

This matter coming on for consideration by the Court upon for of Petitioner for Provisional Stay, Certification of Proposed Findings and Partial Reconsideration of Petition for Review, and the Court having considered said motion and briefs of counsel, and having heard oral argument and now being sufficiently advised in the premises;

NOW, THEREFORE IT IS ORDERED that Motion for Provisional Stay, Certification of Proposed Findings and Partial Reconsideration of Petition for Review be and the same is hereby denied.

ATTEST: A TRUE COPY

/s/ Rose Marie Alderete
Clerk of the Supreme Court
of the State of New Mexico

APPENDIX B

STATE OF NEW MEXICO
COUNTY OF SANTA FE
IN THE DISTRICT COURT

No. 50,827

UNITED NUCLEAR CORPORATION,
Plaintiff,

vs.

GENERAL ATOMIC COMPANY, *et al.*,
Defendants.

SANCTIONS ORDER AND DEFAULT JUDGMENT

[Entered March 2, 1978]

This matter coming before the Court upon motions for sanctions and for granting and entry of default judgments against defendant, General Atomic Company, for its failure to comply with discovery laws and orders of the Court, a motion for an evidentiary hearing upon part of the motions relating to requested sanctions, responses to the aforesaid motions, supporting affidavits and documents, and argument and authorities made and submitted by the various parties; the Court having given due study and consideration to all of the foregoing, and to the whole record and history in this litigation, including all hearings conducted on discovery questions throughout the period from December 31, 1975, to the present; the Court having further reviewed all relevant pleadings, interrogatories and answers thereto, and other relevant and credible documents and materials in this case, as well as pleadings in other related court cases; based upon all of the foregoing, this Court now concludes that the defendant, General Atomic Company, has followed a con-

scious, willful and deliberate policy throughout this litigation, which continues to the present time, in cynical disregard and disdain of the Rules of Procedure relating to discovery and this Court's discovery Orders, of concealing rather than in good faith revealing the true facts concerning the international uranium cartel in which Gulf Oil Corporation was involved and which through its subsidiaries, officers, agents and affiliates, including defendant, GAC, participated, from an as yet undetermined time, but for not less than from and during 1972 into 1975; the aforesaid policy of defendant, GAC, of hiding that information from the Court and opposing counsel, and in consequence thereof, the exercise of the utmost bad faith in all stages of the discovery process up to the present time, leads the Court to the inescapable conclusion that at this late date, the Court's discovery Orders will not be complied with by the defendant, GAC, and that this Court is powerless to secure unto all parties to this case either due process of law or a fair trial based upon equality and parity of right and duty unless sanctions under Rule 37 are imposed by the Court at this time. To require the other parties to this case to proceed further upon the trial on the merits at this itme, other than upon a consideration of damages, disadvantaged as they are by the lack of discovery and GAC's failure to provide discovery, would result in a grave injustice unto all parties to this action other than GAC and a cynical denial of equal protection of the law unto them; the factual basis for imposing sanctions under Rule 37 appears from and is documented by the "Recitals" which are hereinafter set forth, which manifestly appear from the face of the record herein, without any need or requirement for an evidentiary hearing or other form of additional delay in giving effect to Rule 37, to-wit:

RECITALS

(1) On December 31, 1975, United Nuclear Corporation, plaintiff herein, by motion and leave of the Court, filed its First Set of Interrogatories to General Atomic Company in this action. Those Interrogatories were identical in scope to UNC's interrogatories filed in Cause No. 50044, Santa Fe County District Court. The definition section of those interrogatories filed herein, as well as certain questions, specifically requested information from the constituent partners of GAC, Gulf Oil Corporation and Scallop Nuclear, Inc. Those definitions were not objected to within the time allowed by Rule 33 of the New Mexico Rules of Civil Procedure, and, indeed, were never objected to by GAC.

(2) In UNC's First Set of Interrogatories, UNC asked, *inter alia*, that GAC:

> "32. Identify all agreements and all past, pending or contemplated negotiations of the partnership or the partners, directly or indirectly pertaining to the processing of uranium-bearing ores into U_3O_8 the conversion thereof into UF_6 or any other form, and the marketing and sale of all such uranium-bearing products.
>
> "34. Identify all studies, evaluations, projections and other data pertaining to uranium ore reserves, the mining and milling thereof, the further processing and conversion of uranium and the marketing and sale of all such uranium products."

Such information was relevant and material to the repeated allegations in UNC's Complaint that the 1973 Uranium Supply Agreement and 1974 Uranium Concentrates Agreement were executed in violation of § 49-1-1 and 49-1-2 NMSA 1953 of the New Mexico antitrust statutes.

As to UNC's First Set of Interrogatories, GAC requested and received an extension of time in which to respond.

(3) GAC neither answered nor objected to the Interrogatories within the time allowed, and UNC filed its First Application for Default Judgment on March 10, 1976. On March 12, 1976, the parties entered into an Agreement signed by counsel for UNC, GAC and Gulf Oil Corporation in which UNC agreed to withdraw its Application for Default Judgment, and GAC agreed to "answer in good faith all interrogatories to Defendant presently pending in this action," and to produce documents. No objection was made to the fact that information concerning Gulf Oil Corporation was requested, or that Gulf Oil Corporation was obligated by the terms of this Agreement to produce relevant documents. The agreement between the parties expressly referred to "Gulf Correspondence" as one category of documents which GAC agreed to provide. Said Agreement was entered into with Gulf Oil's knowledge and approval, its attorney having executed same.

(4) The documents generated by the cartel's Secretariat, telexes by the Secretariat, documents of the Canadian producers' group, as well as internal Gulf documents concerning the cartel were, at the time of the March 12, 1976 Agreement, subject to UNC's Interrogatories and the Agreement to produce. At that time, most or all of these documents were in the files and custody of Gulf Minerals Canada, Limited, a wholly owned subsidiary of Gulf Oil Corporation, and included within the scope of UNC's First Interrogatories, in Canada, and no law of the United States or Canada prohibited their production.

(5) Rather than answering the Interrogatories fully, or producing the Gulf cartel documents which was within the ambit and requirement to furnish of its March 12,

1976 Agreement, GAC instead filed on April 2, 1976 wholly inadequate and evasive answers to the Interrogatories. In regard to Interrogatory No. 70, GAC unilaterally declared that it would not provide answers until June 20, 1976.

(6) In response to GAC's Motion to Stay Further Proceedings, this Court held on April 30, 1976, that the "parties are bound by their agreements," and that GAC was obligated to provide full discovery as contemplated by the March 12, 1976 Agreement.

(7) From March 12, 1976, forward, GAC neither identified nor produced cartel documents or information in the possession of Gulf Oil Corporation and its subsidiaries, despite its Agreement to do so, and the Order of the Court on April 30, 1976, that it comply with that Agreement.

(8) On August 6, 1976, UNC filed its Second Motion for Default Judgment for GAC's failure to answer UNC's Interrogatories propounded on December 31, 1975, and its failure to abide by the March 12, 1976 Agreement and the Court's April 30, 1976 Order. In response to that Motion, GAC represented to the Court that "complete and full effort has been made to cooperate with the demands of Plaintiffs in document discovery and such attempts have gone fully beyond any good faith requirements by the Rules of Civil Procedure or agreement of the parties."

(9) From December 31, 1975, the date UNC's Interrogatories were filed in this case, through September 23, 1976, the date the Canadian government passed the Uranium Security Regulations, GAC never informed this Court or UNC about the existence of the international uranium cartel; Gulf Oil Corporation's participation therein; or about the Gulf documents relating thereto in Canada.

(10) Despite its agreement and this Court's Order to produce Gulf documents, GAC willfully, intentionally and in bad faith covered up the fact of Gulf Oil Corporation's participation in an international uranium cartel from at least 1972 into 1975, which include years in which it was in a joint venture with UNC, viz., Gulf United Fuels Corporation [sic] (GUNF). GAC thereby deliberately concealed the existence of evidence which it knew to be highly relevant to the antitrust issues pleaded in UNC's Complaint and stressed by counsel throughout the discovery period. This intentional and willful action was a violation of UNC's discovery rights and the Orders of this Court.

(11) The Court repeatedly has warned that all parties are obligated to make full disclosure in good faith to discovery requests. On several occasions since the beginning of litigation, the Court has told all parties that it expected a good faith, non-evasive and full compliance with discovery. The Court also warned on November 30, 1976, and again on March 3, 1977, that it would apply sanctions provided under Rule 37 of the New Mexico Rules of Civil Procedure for *any party's failure to make discovery in good faith.*

(12) UNC's Second Set of Interrogatories, the discovery subject matter of which also was clearly within the ambit and requirement of its First Set of Interrogatories filed on December 31, 1975, were served on August 16, 1977. A good faith, non-evasive response by GAC to said First Set of Interrogatories would have, in whole or in part, eliminated the necessity for the Second Set of Interrogatories. The Second Set of Interrogatories requested full disclosure and commitment to a set of specific facts by GAC concerning its and Gulf's cartel activities, and requested identification of all documents relevant to each interrogatory.

(13) UNC also filed a Motion to Produce all documents identified in GAC's Answers to Interrogatories on August 16, 1977.

(14) GAC objected to UNC's Second Interrogatories on August 23, 1977, most of which objections were overruled. On September 9, 1977, this Court held a hearing on additional objections by GAC to UNC's Second Set of Interrogatories, most of which were also overruled. GAC was ordered to answer by September 20, 1977. In a hearing before the Court on September 20, 1977, counsel for GAC requested an extension of time in which to answer said Interrogatories on the ground that the extension would enable counsel to provide "full and good faith" answers to the Interrogatories. The extension was granted, and on September 26, 1977, GAC filed its first Answers to UNC's Second Set of Interrogatories.

(15) GAC's first Answers consisted in a large measure of a "do-it-yourself" kit, merely directing UNC to deposition pages from which it was supposed to discover the answers to its interrogatories. This Court, on October 11, 1977, held that GAC's Answers were "defective, incomplete, inadequate and unacceptable." GAC was again ordered to answer the Interrogatories, and to give full and good faith discovery.

(16) On October 20, 1977, GAC filed its Second Answers to UNC's Interrogatories. Those "Answers" excluded all information contained in the Gulf documents in Canada, and did not identify the documents as GAC had been ordered to do on October 11, 1977.

(17) On December 9, 1977, Indiana and Michigan, Detroit Edison and UNC joined in moving to compel further answers to UNC's Second Set of Interrogatories.

(18) After consideration of all briefs filed by GAC and others, this Court held that the answers made and filed by GAC to date had not complied with the Court's orders to make complete, good faith, and non-evasive answers to

UNC's Second Set of Interrogatories. The Court therefore again ordered GAC "completely, in good faith, and without evasion" to answer each of the interrogatories enumerated in Finding No. 3 of the Court's December 27, 1977, Order. The Court also specifically gave notice in its December 27, 1977, Order that if GAC failed or refused to comply with that Order of the Court, any aggrieved party could apply to the Court for appropriate relief under Rule 37.

(19) GAC obtained from the Court two extensions of time in which to answer UNC's Interrogatories, and filed its Second Supplemental Answers on February 1, 1978. The Court has examined the answers so filed and finds them unresponsive and evasive to the questions asked, and mere legal argument in many of such answers. The series of Interrogatory Answers filed by GAC, after six months shows disdain for this Court's Orders that all parties make good faith discovery. Those answers so filed, coupled with what had gone before them, constitute, in effect, obstruction of justice, and demonstrate a willful deliberate and flagrant scheme of delay, resistance, obfuscation and evasion in discovery matters.

(20) The latest answers filed by GAC also violate the express terms of the Court's Order of October 11, 1977, wherein the Court held that the deposing party is entitled to obtain from the deponent party a commitment to a set of facts, posture or position on the subject matter of the Interrogatory. Rather than committing to a set of facts, GAC instead simply has stated that various cartel documents cited by I & M, which GAC had failed to mention in its Second Answers, "purport to" reflect certain events. GAC steadfastly has refused and refuses to admit that such events took place, or to state the true facts concerning the cartel, and Gulf's participation in it.

(21) By reason of the entire history relating to the manner of fulfilling its discovery requirements since the

filing of UNC's First Set of Interrogatories on December 31, 1975, the Court concludes that it is hopeless to expect that GAC will in "good faith and without evasion" comply with the discovery requirements of the New Mexico Rules of Civil Procedure or this Court's Orders. GAC has willfully, intentionally, deliberately and in bad faith, failed and refused to answer UNC's Second Set of Interrogatories. UNC and the other parties to this suit have been irreparably prejudiced by this failure. Any party to any civil action is entitled to have and rely upon good faith discovery in the preparation and presentation of its case in chief and not at the end of the trial on its merits when such discovery is of little or no value to such party. If there can be any sanctions for non-discovery and if Rule 37 has any meaning, a party unlawfully deprived of discovery is entitled to those sanctions early and as a part of its case in chief and not at the end of the trial on its merits, whereby the innocent victim party would suffer the jeopardy of a motion for dismissal under Rule 41 (or for a directed verdict) without having the discovery to or sanctions to counter such a motion. It is now too late to expect answers or discovery in time to serve the purposes of the discovery rules and the Rules of Civil Procedure. This Court, in the interests of justice and fairness to all parties, and in order to enforce equality within the judicial process, must, at this time, apply appropriate sanctions for non-discovery specifically provided for in Rule 37 of the New Mexico Rules of Civil Procedure.

(22) GAC is under a duty to produce all documents to UNC which are or may be relevant to any of the Interrogatories asked in UNC's First Set of Interrogatories and even more particularly delineated and asked in UNC's Second Set of Interrogatories, including but not limited to any documents relevant under questions 30 through 34 of the First Set of Interrogatories.

(23) GAC has represented to the Court and to all parties on several occasions that UNC had all documents which were relevant to the cartel or other issues raised in UNC's Interrogatories.

(24) The facts hereinabove set forth display a pattern and practice of GAC and Gulf to conceal documentary evidence of Gulf's and GAC's participation in the cartel and to subvert the discovery processes of this Court. GAC has deliberately failed to produce highly relevant documentary evidence. Ninety-one documents which had been turned over by Gulf to Judge Snyder in Westinghouse litigation in the Federal District Court in Pittsburgh, Pennsylvania, were never turned over to this Court, nor was their existence disclosed to the Court or to UNC until after it was learned that Judge Snyder had held more than 50 of those 91 documents to be outside the scope of the attorney-client privilege. When UNC brought the matter up in open Court, upon this Court's Order, GAC turned said non-privileged documents over to UNC, but not before. The same law firm, Howrey and Simon, of Washington, D.C., which represents GAC in this action, represented Gulf Oil Corporation before Judge Snyder in the Federal District Court action in Pittsburgh. The failure to reveal the existence of the Snyder documents here in this case, was a deliberate attempt to conceal the existence of that evidence and avoid turning relevant documents over to parties to this litigation in compliance with lawful discovery demands.

Based on all facts, the Court is forced to conclude, therefore, that GAC has followed a consistent pattern and practice of concealing, rather than revealing, highly relevant documents to the Court and to the parties here, and that such actions and practices have been contumacious, intentional, willful, deliberate and, in the utmost bad faith.

(25) Within the ambit and requirement of its First Set of Interrogatories, filed on December 31, 1975, UNC's Second Set of Interrogatories with even more particularly and specificity ask, in almost every question, for the separate identification of documents relating to the subject matter of each separate interrogatory, and production of all documents so identified. In GAC's First Answers to such Second Set of Interrogatories, filed on September 26, 1977, no identification of documents was made, and virtually no documents were produced, despite UNC's clear request for such identification and production.

(26) In its October 11, 1977, Order, the Court required and ordered GAC to "separately, clearly and definitively identify all documents, where such identification is requested, whether such documents be housed only in Canada, only in the United States, in both countries or elsewhere."

(27) Rather than identifying the documents, GAC instead wrote a Canadian Minister asking if it could get permission to reveal "a summary of contents" of the documents. As this Court held on November 18, 1977, the Court's October 11, 1977, Order did not specify that a "summary of contents" be stated as part of the identification of documents. The Court's Order of October 11, 1977, to identify documents was not performed or complied with, but, rather, it was sought to be avoided, and willfully and deliberately violated by GAC.

(28) GAC next wrote a letter to a Canadian Minister who has been determined by the courts of Canada to have no authority to interpret or deal with the Uranium Security Regulations. Nevertheless, in full knowledge that the Minister to whom it wrote had no legal authority to interpret the Regulations, GAC asked and waited for his interpretation as to whether he thought it could identify documents in accordance with the Court's October 11 and

November 18, 1977, Orders. A letter was received from the Canadian Minister saying he had no authority to interpret the Regulations, but that in his personal opinion, the Regulations did not allow identification.

(29) The Canadian Security Regulations on their face prohibit only revealing "contents or information contained in" cartel documents in Canada. A reasonable interpretation of that language, and this Court so reads it, would mean that simple identification, giving the date of the document, the author, addresses, and general subject matter, would not violate the law of Canada because the "contents or information" contained in the document itself would not be revealed.

(30) Nevertheless, GAC has refused to comply with the Order of this Court also concerning identification of the Canadian documents. As of this date, GAC has not identified the documents in Canada for the benefit of the Court and the parties nor has it even stated or disclosed the number of documents housed in Canada, thereby following its established practice of concealing, rather than revealing, pertinent information.

(31) The Court's October 11, 1977, Order also required GAC to "take affirmative action and to exert all lawful effort reasonable and possible to bring about the production" of documents housed in Canada. In order to be held to have been acting in good faith, the Court said that GAC should "seek diligently dispensation from those Canadian laws so that it could lawfully produce documents to which such laws may pertain."

(32) GAC's response to this requirement that it take "all lawful effort reasonable and possible" (other than so late as February 22, 1978, to offer to take other counsel and the Court to Canada to talk to Canadian officials about production of documents, in person), was to write a simple letter to the Canadian Minister of Energy,

Mines and Resources, asking if he would consent to release the documents in question. The Canadian government's answer was "no.".

(33) Actions taken by parties in similar cases in dealing with foreign governments which have imposed secrecy laws are instructive as to the standard of "good faith" to be used in dealing with foreign governments to secure the release of documents. In *In Re Ampicillin Litigation*, in which Judge Sirica ordered that findings of fact be made against a party which refused to produce documents and because of a British secrecy law, the Defendant undertook diligent and long-term negotiations with the British government which ultimately resulted in the documents being released in their entirety.

(34) Similarly, in *Societe Internationale* v. *Rogers*, 357 U.S. 197 (1958), "good faith" in dealing with a foreign government over the release of documents was found only after the petitioner had negotiated for two years with the Swiss government, which resulted in the release of over 190,000 documents. In addition, petitioner there persuaded the Swiss government to allow a neutral third party agreed upon by petitioner and the Swiss government to inspect the documents and obtain the release of some of them.

(35) GAC's writing a simple letter to a Canadian Minister who has been declared by law to have no authority to interpret Canadian Security Regulations or to grant a dispensation therefrom does not constitute a "good faith" effort to secure the release of documents in Canada or the information contained in them. Neither GAC, nor Gulf Minerals Canada, Ltd., nor Gulf Oil Corporation has entered into any negotiations with the Canadian government, or taken any further action beyond writing a simple letter insofar as made known to this Court. Such action does not constitute the "good faith" and "diligent" effort to secure the release of the docu-

ments required by the Court's October 11, 1977, Order. In fact, GAC's actions demonstrate its actual intent to conceal the documentary evidence concerning the cartel rather than to produce it in good faith to the parties to this litigation and the Court.

(36) UNC filed a Motion on November 4, 1977, asking that this Court find all facts provable from the documents stored in Canada against GAC. The Court authorized the presentation of evidence at an evidentiary hearing.

(37) At the aforesaid evidentiary hearing, GAC put on evidence through an attorney with Howrey and Simon, who testified about the efforts made by that law firm to identify documents in answer to UNC's Interrogatories. GAC put on absolutely no evidence about how the documents came to be stored in Canada, or why they were there.

(38) UNC moved the admission at the evidentiary hearing of four separate statements by M. [sic] L. T. Gregg in his *Westinghouse (Richmond)* deposition. The admissibility of this deposition testimony was stipulated to by counsel for GAC on the record.

(39) Mr. Gregg's deposition testimony established that Gulf followed a deliberate policy of housing the cartel documents in Canada, rather than in the United States. His testimony also established that to the extent documents were in the United States, it was understood that they were to be stored in the offices of the Pittsburgh law department, where they could be shielded by a claim of attorney-client privilege.

(40) It was on this uncontradicted factual record that the Court made its findings on November 18, 1977, that Gulf followed a conscious and deliberate policy of housing the cartel documents in Canada. That finding is reiterated here. Gulf's action in regard to storing cartel

documents in Canada amounts to deliberately courting or seeking legal impediments to the production of the records.

(41) UNC has complied with GAC's discovery requests fully and in good faith insofar as anything in that regard has been brought to the attention of or is known to the Court. No representation to the contrary has been made by any party hereto.

(42) All other parties to this litigation except GAC have also made good faith efforts at discovery, and have both produced documents and answered interrogatories in good faith.

(43) Based on the deposition testimony given by L. T. Gregg in this case, it is apparent that there are documents which presently exist in the files of Gulf Minerals Canada, Ltd. (a wholly owned subsidiary of Gulf) which are highly relevant to the antitrust, fraud and breach of fiduciary duty allegations by UNC in its Complaint and in its defense to GAC's Counterclaim. GAC has produced to the parties to this litigation only a small part of those documents. GAC's refusal to produce documents housed in Canada since December 31, 1975, was not based on inability to comply with production requests, but rather on bad faith refusal to produce.

(44) The cartel documents and records were clearly within the ambit and requirement of a good faith compliance with the initial discovery demands made herein by UNC in its First Set of Interrogatories on December 31, 1975, and numerous subsequent demands made prior to September 23, 1976, the effective date of the Canadian Uranium Information Security Regulations.

(45) Defendant, GAC, was in default and violation of its obligation to produce cartel documents from Canada and elsewhere in this case, prior to and long before September 23, 1976, wherein and whereby a good faith com-

pliance with lawful discovery demands, their agreements and the Orders of this Court, would have produced in this case all of such cartel documents before there was a Canadian law or prohibition against so doing.

(46) The findings and recitals in the Court's Order of November 18, 1977, relating to discovery are adopted and incorporated herein by reference as a part of the "Recitals" of this Order. A copy of said Order of November 18, 1977, is hereunto attached.

(47) In this situation, GAC's failure to produce in good faith and failure to answer interrogatories in good faith has deprived UNC of a full opportunity to cross-examine GAC's witnesses defend against GAC's counterclaims for specific performance and damages; to rebut GAC's defenses to their claims; or on its case in chief to properly present United Nuclear's antitrust claims pleaded in the Complaint. Similarly, GAC's failure in discovery has deprived this Court of evidence which is indispensable to a proper and just adjudication of the issues in this case.

(48) The Court concludes that the only just and proper way to protect and secure due process rights to a fair trial for UNC, and the defendant, I & M is to impose sanctions under Rule 37 of the New Mexico Rules of Civil Procedure.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

A. The Court hereby adopts and imposes the following Rule 37 sanctions against the defendant, GAC, and in favor of the other parties to this case, adopted and found as fact because of the failure of defendant, GAC to comply with discovery Rules and the Orders of this Court, which failure the Court finds to be willful and deliberate, to-wit:

1. Gulf Oil Corporation (Gulf), Gulf General Atomic (GGA), Gulf Minerals Canada, Ltd. (GMCL), General Atomic Company (GAC), and Gulf Minerals Resources Company (GMRC), severally and as co-conspirators with each other, and with other members and participants therein, participated in the formation and operation of an international conspiracy and cartel of uranium producers ("the cartel"), from at least 1972 to 1975. The purpose and effect of the cartel was to limit the supply, control production, allocate markets and fix the price of uranium.

2. The Canadian Government encouraged, but in no way required or mandated the membership of GMCL in the cartel. Neither Gulf, GGA, GMCL, GAC, nor GMRC, nor any of them, was ever compelled by the Canadian Government to participate in the cartel. GMCL would not have had the authority to join and participate in the cartel without authorization from responsible officers of Gulf, who were members of the so called "Executive", and who gave such authorization and sanction to the participation, actions and dealings of GMCL in the cartel.

3. GMCL is and was a wholly owned subsidiary of Gulf, and after GMCL joined the cartel, its members and members of the cartel Operating Committee had a number of meetings at various locales around the globe. At such meetings, the members of the cartel, including GMCL, agreed: (a) not to sell to middlemen, wherever located, or, alternatively, to do so only on highly discriminatory terms. Such middlemen included and were understood by both GMCL and Gulf to include both Westinghouse and General [sic] United Nuclear Fuels Corporation (GUNF), and (b) to divide world markets (excluding the USA) and to fix the price of uranium. GUNF at all times was a corporation wholly owned by Gulf and UNC as a joint venture between them, and with Gulf holding majority ownership and management control thereof.

UNC and Gulf were under a fiduciary relationship, one to the other in their aforesaid joint venture creation, ownership and operation of GUNF. As fiduciaries, each owed to the other full disclosure of any information affecting or that might affect the operation and success of GUNF.

4. Said cartel agreements were carried out effectively; the world market price of uranium was fixed at artificially high levels by the cartel, and GUNF, a middleman, was greatly handicapped and damaged in its efforts to procure uranium.

5. Pursuant to an agreement with the cartel, Gulf, individually and with and through its divisions, affiliates and subsidiaries, including but not limited to GMCL, restricted and withheld production of uranium at Mount Taylor in New Mexico in order to limit the supply and control production of uranium in New Mexico, with the independent specific intent to monopolize New Mexico uranium reserves. The restrictions of Mount Taylor production was and is a part and parcel of the aforesaid comspiracy by Gulf and by the cartel. Such restriction of production was a combination and attempt to monopolize as well as actual monopolization of New Mexico uranium reserves, and has constituted and constitutes a substantial adverse effect on New Mexico commerce.

6. Gulf and GAC executed the 1973 Uranium Supply Agreement and the 1974 Uranium Concentrates Agreement with United Nuclear Corporation (UNC) with the intent and as a part of an attempt, combination and conspiracy, engaged in by Gulf, GAC, their affiliates, divisions and subsidiaries, to monopolize New Mexico uranium reserves, and with the purpose and effect, in furtherance of the cartel conspiracy, to limit supply and control production and competition with the cartel from a New Mexico uranium producer. Both of the aforesaid contracts had and have as their object by Gulf and GAC,

and do in fact operate, to restrict trade or commerce of a product of the mines of New Mexico, and have constituted and constitute a substantial adverse effect on New Mexico commerce.

7. Gulf and GAC executed the aforesaid agreements as a part of the attempt, combination and conspiracy engaged in by them, their affiliates and subsidiaries and the cartel to monopolize and the actual monopolization of New Mexico uranium reserves.

8. Gulf and GAC knew and intended that the cartel and its actions would and did in fact substantially raise the price of uranium in the United States of America domestic market, which did substantially and adversely affect New Mexico commerce.

9. Pursuant to a policy of secrecy and the cartel's directions, rules or requirements concerning secrecy, neither did Gulf, nor GAC, nor anyone acting for them, ever inform UNC or GUNF about their aforesaid participation in or the actions of the cartel, at anytime before the execution of or negotiations concerning the aforesaid 1973 and 1974 agreements. Gulf and GAC thereby breached any fiduciary duty it may have owed in the premises to UNC or to GUNF, or to both.

10. Pursuant to the cartel's express inclusion of the United States market and United States buyers in its price fixing scheme, Gulf, GMCL and GGA quoted uranium to United States utilities at cartel prices, and to GUNF at prices above cartel prices, with specific and predatory intent of injury GUNF and UNC, thereby breaching any fiduciary duty in the premises owed to UNC and committing a predatory act against GUNF.

11. Motivated by inside knowledge of the cartel's existence, policies and actions and its plan to keep UNC's uranium locked up and out of competition with the cartel, Gulf refused to supply uranium to GUNF as it had led

UNC and GUNF to believe it would do and refused to allow GUNF to purchase uranium on the open market, thereby breaching any fiduciary duty it may have owed to UNC.

12. The cartel viewed middlemen as serious competitors, and discriminated in price against them in order to eliminate them as competitors. Gulf Oil Corporation and General Atomic Company executed the 1973 and 1974 Uranium Supply Agreements with the purpose and effect of eliminating middlemen as competitors by keeping material off the market which they might purchase.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

A. Judgement by default, except upon the issues of damages, be and it hereby is entered and granted;

1. Unto United Nuclear Corporation upon its Complaint against General Atomic Company, and

2. Unto Indiana & Michigan Electric Company upon its Crossclaim against General Atomic Company.

B. The defenses of General Atomic Company to the Complaint of United Nuclear Corporation and to the Crossclaim of Indiana & Michigan Electric Company and its Counterclaim against United Nuclear Corporation and its Crossclaim against Indiana & Michigan Electric Company, be and they all hereby are stricken.

IT IS FURTHER ORDERED that the trial of this case on its merits continue and proceed upon determination of damages only, and such other matters as may now be appropriate in view of the granting of default judgments herein.

IT IS FURTHER ORDERED that the Court shall and hereby does reserve the prerogative to make and enter herein such other, further, additional of different find-

ings, orders or judgments, and to do such acts and conduct such proceedings as may be necessary to give full effect to the foregoing Sanctions Order and Default Judgments and to enforce justice between the parties hereto.

/s/ Edwin L. Felter
District Judge

IN THE DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

No. 50827

UNITED NUCLEAR CORPORATION,
Plaintiff,

vs.

GENERAL ATOMIC CORPORATION, et al.,
Defendants.

ORDER

[Entered November 18, 1977]

This matter coming on regularly to be heard by the Court upon the motion of Plaintiff, United Nuclear Corporation "For Order Compelling Identification and Production of Documents and Finding All Facts Provable From Canadian Documents Against Gulf and GAC", and the responses to said motion filed by Defendant, General Atomic Company; the Court having considered said motion, responses, oral and written arguments of counsel, affidavits, the record proper and evidence heretofore admitted by the Court applicable to such motion, and being otherwise fully advised in the premises, Finds and Concludes:

1. Due process of law and the equal application and protection of law require that *each* party to this case fully comply with Rules 31 through 34 inclusive of the New Mexico Rules of Civil Procedure and produce for inspection and copying *all* documents included within the scope of such rules which are relevant or may lead to relevant evidence and which are not privileged under the laws of New Mexico.

2. Deference to the sovereignty and national interest of Canada or its provinces cannot be accomplished through sacrifice of the sovereignty of New Mexico and of due process of law and equal application and protection of law afforded by the laws of New Mexico. In this forum, the aforesaid laws of this forum which pro-

tect the fundamental public policy of this State must govern over the national interest or policy of a foreign country as legislated and conceived by that foreign country. No rule of comity would require a sovereign state of the United States to so abdicate the protection of fundamental rights under its general laws that are necessary to a fair trial in favor of special foreign laws that are not concerned with any aspect or requirement of fair trial.

3. No adequate remedy or protection in these premises exists except for the production of the documents which are the subject of the foregoing motion or the finding by this Court of all facts provable from such documents against the party failing to produce them in accordance with Rules 31 through 34, inclusive, and as authorized by Rule 37 of the New Mexico Rules of Civil Procedure. Said documents have not been produced for inspection and copying, and Defendant, General Atomic Company has failed to produce said documents, caused in part, by its own early and deliberate policy of housing such documents in Canada and outside the boundaries of the United States of America.

4. The Court's order herein dated October 11, 1977 required of Defendant, General Atomic Company that it "clearly and definitively" identify all documents housed in Canada, but said order did not specify a "summary of its contents" as a part of such identification. These provisions of the Court's order were not performed or complied with but rather they were sought to be avoided.

5. In response to the Court's order of October 11, 1977 Defendant, General Atomic Company identified certain documents not housed in Canada by reference to computer number. Such method of identifying documents in this instance and in view of the time constraints imposed therein, may be considered by the Court to be a reasonable and substantial compliance with the Court's

order as to those documents so identified, to the extent that such identification is accurate.

Now, Therefore, In Accordance With The Foregoing Findings and Conclusions, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. Defendant, General Atomic Company, forthwith shall identify, clearly and definitively, all documents housed in Canada which are the subject of said motion.

2. All facts provable from documents housed in Canada which are not produced and which are the subject of said motion are found against Defendant, General Atomic Company, and said defendant is precluded from offering evidence herein in opposition to such findings of fact; subject however, to the other provisions of this order.

3. On or before December 15, 1977, or at least 7 days before plaintiff rests its case in chief, whichever shall first occur, Plaintiff, United Nuclear Corporation shall file and serve proposed findings of fact on the factual issues to be determined against Defendant, General Atomic Company by reason of the non-production of the foresaid "cartel" documents which are the subject of Plaintiff's motion. Within fifteen (15) days after service of such proposed findings of fact, each defendant herein may file and serve responses to such proposed findings of fact. All parties may accompany such filings with memoranda of argument and authorities, if desired.

4. In making its final decision herein and at any other appropriate stage of the proceedings herein the Court will consider and give effect to appropriate findings of fact consistent with this order and consonant with the evidence then admitted and before the Court, which is relevant to the issue.

5. The time limits specified in this order may be extended, shortened or modified for good cause shown.

/s/ Edwin L. Felter
District Judge

IN THE DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

No. 50827

UNITED NUCLEAR CORPORATION,
Plaintiff,

vs.

GENERAL ATOMIC COMPANY, et al.,
Defendants.

ORDER

[Entered March 2, 1978]

Except to the extent granted by the Court's "Sanctions Order", made and filed simultaneously herewith, all other Motions and parts thereof by the various parties to this case related to discovery, and submitted to the Court for decision, and all requested findings of fact and conclusions of law inconsistent with those of the Court, contained in the Court's "Sanctions Order", are refused and denied.

/s/ Edwin L. Felter
District Judge

APPENDIX C

IN THE SUPREME COURT
STATE OF NEW MEXICO

No. 11,775

UNITED NUCLEAR CORPORATION,
Plaintiff-Appellee,

vs.

GENERAL ATOMIC COMPANY, a Partnership Composed of Gulf Oil Corporation and Scallop Nuclear, Inc.,
Defendant-Appellant.

No. 11,777

STATE OF NEW MEXICO, *ex rel.*
GENERAL ATOMIC COMPANY,
Petitioner,

vs.

HONORABLE EDWIN L. FELTER, District Judge,
First Judicial District, State of New Mexico,
Respondent.

Wednesday, February 1, 1978

JUSTICE EASLEY: Mr. Montgomery, I'm wondering, wouldn't it be a better remedy for everyone con-

cerned, if we do anything on this, to ask the Judge not to enter his findings that he makes until you've had time enough to come up here and [18] let us know what he's done, rather than speculate what he would do?

MR. MONTGOMERY: The problem there, your Honor, is I don't know whether we could come to the Court under the ordinary appeal processes until after conclusion of the trial and on appeal from the final judgment.

JUSTICE EASLEY: Of course, what I'm concerned about is that you're here now and you were here before. You don't know what Judge Felter is going to do in his findings. Why not come here after he has determined what he is going to have in the findings and give us a chance to see what he has decided to do?

MR. MONTGOMERY: That is a dilemma, your Honor, that the parties are faced with, and I admit it is a dilemma that we face because of the ambiguity which Justice Payne speaks of as talking out of both sides of one's mouth. The reason is because once the findings are entered, everyone in the world is told there was this conspiracy, that the Judge has found this, and General Atomic Company participated in it. It is now available for use in collateral estoppel. We can contest it, but attempts will be made to use it. It will bring about freely adverse publicity, which would harm the defendant in the conduct of all of its business relationships.

JUSTICE EASLEY: Have you talked to Judge Felter about [19] delaying the entry of his findings until you've had time to examine them, to come here with them?

APPENDIX D

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

Santa Fe County

Wednesday, February 1, 1978

No. 11,775

UNITED NUCLEAR CORPORATION,
Plaintiff-Appellee,

vs.

GENERAL ATOMIC COMPANY, a partnership composed of Gulf Oil Corporation and Scallop Nuclear, Inc.,
Defendant-Appellant,

INDIANA AND MICHIGAN ELECTRIC COMPANY, and THE DETROIT EDISON CO.,
Defendants-Appellees.

No. 11,777

STATE OF NEW MEXICO, ex rel.
GENERAL ATOMIC COMPANY,
Petitioner,

vs.

HON. EDWIN L. FELTER,
Respondent.

Original Mandamus and Prohibition
Under Power of Superintending Control

This matter coming on for consideration by the Court upon Motions of Petitioner and Appellant for Stay of Proceedings, and the Court having considered said motions and being sufficiently advised in the premises;

NOW, THEREFORE, IT IS ORDERED that the motions to stay the trial be and the same are hereby denied.

IT IS FURTHER ORDERED that the trial court be and the same is hereby directed to allow the parties sufficient time prior to the entry of any order or findings of facts based upon its order of November 16, 1977 entered in Cause No. 50827 on the Civil Docket, Santa Fe County District Court, to present to this Court additional motions as may be appropriate.

ATTEST: A TRUE COPY

/s/ Rose Marie Alderete
ROSE MARIE ALDERETE
Clerk of the Supreme Court
of the State of New Mexico

APPENDIX E

STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT

January 25, 1978

Chambers of
Edwin L. Felter
District Judge
Division II

Post Office Box 2268
Santa Fe, N.M. 87501
Area Code 505
Telephone 827-2385

BIGBEE, STEPHENSON, CARPENTER & CROUT
Attorneys at Law
P. O. Box 669
Santa Fe, New Mexico 87501

MONTGOMERY, ANDREWS & HANNAHS
Attorneys at Law
P. O. Box 2307
Santa Fe, New Mexico 87501

RODEY, DICKASON, SLOAN, AKIN & ROBB
Attorneys at Law
P. O. Box 1888
Albuquerque, New Mexico 87103

Mr. James T. Paulantis
Attorney at Law
1220 Sandia Savings Bldg.
Albuquerque, New Mexico 87102

JONES, GALLEGOS, SNEAD & WERTHEIM
Attorneys at Law
P. O. Box 2228
Santa Fe, New Mexico 87501

SIMPSON, THATCHER & BARTLETT
Attorneys at Law
123 W. Palace
Santa Fe, New Mexico 87501

RE: UNC vs. GAC, et al
Santa Fe County #50827

Dear Sirs:

I have been concerned about the manner for submission and decision of the issue relating to UNC's requested findings of fact and conclusions of law on the cartel issue. I have given it much thought and have concluded that in the thinking of the Court and probably all of the parties that we have been confusing and mixing a discovery issue with and though it were a trial issue.

In order to correct any confusion I have, this date, entered an order, a copy of which is enclosed.

I regret anything the Court may have done in the premises that has inconvenienced anyone.

Very truly yours,

/s/ Edwin L. Felter
EDWIN L. FELTER
District Judge

ELF/amm

Enclosure

IN THE DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

No. 50827

UNITED NUCLEAR CORPORATION,
Plaintiff,

vs.

GENERAL ATOMIC COMPANY, *et al.*,
Defendants.

ORDER

[Entered January 25, 1978]

The Court having given reconsideration to its prior rulings from the bench, or otherwise, with respect to the manner and scope of submission for decision of the request for findings of fact and conclusions of law by plaintiff, UNC, based upon the Court's order entered on November 18, 1977; the Court now being satisfied that such prior rulings, in part, were improvidently made, now finds and concludes as follows:

1. The request for findings of fact and conclusions of law made by UNC as aforesaid presents a discovery issue and not a trial issue.

2. No necessity has existed or now exists for delay or interruption of the trial on the merits in order that the aforesaid discovery issue should properly be submitted to and decided by the Court.

3. Although most discovery issues are resolved before commencement of the trial on the merits, this discovery issue could not have been so resolved, and must now be resolved without trial disruption because in whole or in

part of the Court's denial at an early date, of UNC's motion for default judgment based in part upon noncompliance with discovery by GAC, the granting of extensions of time to GAC to comply with discovery obligations, and the Court's desire and preference for discovery rather than sanctions for non-discovery.

4. The trial on the merits will not be considered by the Court in deciding said discovery issue; rather it will be decided upon its own record as that record exists at the time the issue is finally submitted for decision, which record includes the relevant, material and competent discovery, having the quality of admissible evidence, or the lack of discovery pertinent unto the issue of discovery for disposition by the Court.

IT IS THEREFORE ORDERED as follows:

1. The request of plaintiff, UNC for findings of fact and conclusions of law based upon the Court's order of November 18, 1977 shall be submitted to the Court and disposed of by the Court in accordance with this order.

2. Any prior rulings by the Court from the bench or otherwise that may be inconsistent with this order are rescinded and withdrawn by the Court as having been improvidently made.

3. Except to the extent modified by this order, the aforesaid order of the Court entered November 18, 1977 shall remain of full force and virtue.

4. The Court has not yet read the brief of UNC upon the issue which is the subject of this order, and will return it to UNC unread; the time for final submission of the issue upon briefs due February 8, 1978 will be extended to a date to be fixed by the Court to allow all parties a reasonable time to submit new briefs upon the issue which take into account and comply with this order, and which will not interrupt the trial on the merits.

Such briefs will be submitted simultaneously by the parties.

/s/ Edwin L. Felter
EDWIN L. FELTER
District Judge

APPENDIX F

Brief Review of Part of the History of the Litigation Relevant to the Discovery Issues

The following facts demonstrate that Judge Felter committed patent error in ruling that the lack of production of documents in the possession of Gulf or GMCL constituted bad faith. For example, though "Recitals" 3 through 10 asserted bad faith as a result of nondisclosure before August 1977 of "cartel documents" belonging to Gulf or to GMCL, this assertion of bad faith is refuted by numerous points:

(a) When UNC originally filed its suit in the New Mexico state courts in mid-1975, Gulf was a named defendant. Gulf caused the suit to be removed to federal court. But when the United States District Judge indicated he would not grant UNC's motion for remand, UNC dismissed its own suit and filed a new suit the same day in the state courts without naming Gulf as a defendant. Gulf was deliberately dropped as a party in the new action in order to avoid the diversity of citizenship that had resulted in the removal of the first suit to federal court. Consequently, the action now pending before Judge Felter is only against the partnership known as General Atomic Company, and Gulf was never a party defendant. According to Judge Felter's "Recitals", however, GAC was expected to know that documents in the possession of Gulf and GMCL were being sought in a suit from which Gulf had been dropped as a defendant.

(b) Perhaps because Gulf was not a defendant, but more probably because the idea was not then conceived by UNC, the foreign marketing arrangement to which GMCL was required by the Government of Canada to be a party had not been made an issue in the complaint which instituted this action. There is no question, in this regard, that UNC had full knowledge of the inter-

national marketing arrangement and of GMCL's status as a Canadian producer when the agreements it is seeking to void were executed.[1] Although the complaint did not mention the marketing arrangement, Judge Felter's recitals presuppose that GAC knew that UNC was seeking documents related to the foreign marketing arrangement.

(c) Since Gulf had been dropped as a separate party defendant (and no nonparty discovery subpoena was issued to the corporation), the only reasonable assumption on the part of GAC, in responding to UNC's First Set of Interrogatories, was that these interrogatories—as well as the agreement of March 1976 cited in the judge's "Recitals"—referred only to documents in the possession of GAC. Indeed, between June and September, 1976, UNC sent a team of document searchers to GAC's headquarters in San Diego, California, where they had access to more than six million document pages and copied over 180,000. No request was made during that time for GMCL's Canadian papers or for documents in the possession of Gulf.

(d) The conclusion that no documents in the possession of Gulf or its subsidiaries were being sought was buttressed by statements made in open court by UNC's counsel. One of UNC's attorneys was a former Justice of the New Mexico Supreme Court, Donnan Stephenson, Esq., who joined in the representation of UNC immediately after resigning from the New Mexico Supreme Court in mid-1976. He said on August 12, 1976, when arguing against a federal declaratory judgment suit

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[1] Douglas M. Johnson, President of UNC, testified to this effect. *See* Appendix J, at 67a, *infra*. Similarly, David F. Shaw, the previous UNC President, testified that he knew of the arrangement as early as March 1972. *See* Appendix K, at 68a-71a, *infra*.

brought by Gulf against UNC in the United States District Court for the District of New Mexico: [2]

> [W]e wanted no controversy with Gulf; we have no controversy with Gulf . . . and I can only say this to Your Honor, that there is no [independent] action [against] Gulf, contemplated, thought of, being formulated or anything of that sort at this time.

Similarly, on March 7, 1977, Mr. Stephenson said on behalf of UNC that it was not seeking to secure documents located in Canada. Rather, he said, "we seek documents within the United States. . . . We are talking about documents in the United States". (*See* Appendix L, at 72a, *infra.*)

(e) The common understanding that no Canadian documents were being sought during the first year and a half of the litigation is also established by statements regarding discovery made by counsel for UNC until mid-1977. After the GAC documents were examined and other extensive discovery relating to GAC and activities in the United States had been completed, UNC's lead counsel, Harry Bigbee, Esq., represented on two separate occasions in January, 1977 that UNC's discovery essentially was complete. In a memorandum of April 19, 1977, UNC represented:

> [A]s far as we are concerned, discovery is virtually complete. . . . We have very little more discovery in mind.

In fact, UNC's supplemental answers filed in July, 1977, to GAC's interrogatories regarding the grounds for the lawsuit failed to make any mention of the alleged "international cartel." It is most extraordinary, therefore, for GAC now to be charged with "bad faith" for

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[2] *Gulf Oil Corporation* v. *United Nuclear Corp.*, Cas. No. 76-032B Civil.

having failed, in response to the First Set of Interrogatories, to produce GMCL's foreign documents relating to an "international cartel" that was not seriously contended to be an issue in the litigation until August, 1977.[3]

Another example of Judge Felter's patent errors in accusing GAC of bad faith occurs in Recitals 12 through 20. These deal with GAC's alleged bad faith in responding to UNC's "Second Set of Interrogatories," which were served on August 16, 1977—only two and one half months before the trial was to begin and only 15 days before the date set by Judge Felter for the termination of discovery—and which contained ninety-seven multipart interrogatories covering 55 pages. This was the first UNC document in the litigation requesting Canadian papers, and GAC promptly took all steps it could to demonstrate the Judge Felter that such production was unjustified and unauthorized—particularly since it required a violation of criminal law by a subsidiary of a corporation that was not even a party to the lawsuit. GAC's efforts to secure a waiver of the foreign law restriction against identification or production of GMCL's documents are summarized in the companion Petition for Certiorari (No. 77-1236, pp. 7-10, and Appendices G-K, pp. 34a-43a), and that history need not be repeated here. It should be noted, however, that Judge Felter has never set forth in any of his orders with specificity how GAC's answers to these interrogatories were anything less than sufficient and made in good faith.

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[3] Indeed, it was not until January 21, 1977, that Judge Felter ruled that documents in the possession of Gulf, rather than GAC, were required to be produced. On that date, he did order production of Gulf documents by April 15, 1977; and GAC—in a period of less than three months—expended the great bulk of 34,700 man-hours of lawyers, paralegals, management and clerical help, in efforts to comply with that order. Tens of thousands of Gulf documents were made available for inspection and copying. But there was still no suggestion—even after this date and notwithstanding the admission of knowledge of the "international cartel" by UNC executives—that "international cartel" documents were being sought.

APPENDIX G

[Summary of March 3, 1978
Meeting with Canadian Government]

MONTGOMERY, ANDREWS & HANNAHS
ATTORNEYS AND COUNSELORS AT LAW
325 Paseo de Peralta
Santa Fe, New Mexico 87501

March 9, 1978

Honorable Edwin L. Felter
District Judge, Division II
Santa Fe County Courthouse
Santa Fe, New Mexico 87501

Re: UNC v. GAC, et al.; Santa Fe No. 50827

Dear Judge Felter:

Enclosed is a copy of a Report to the Court and Affidavit filed today in the Clerk's office. This concerns the meeting with Canadian government officials which Mr. Bodner and I attended in Ottawa last Friday.

Yours very respectfully,

/s/ Seth D. Montgomery
SETH D. MONTGOMERY

SDM:alb
enclosure

cc: All counsel of record w/enc.

IN THE DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

No. 50827

UNITED NUCLEAR CORPORATION,
Plaintiff,

v.

GENERAL ATOMIC COMPANY, et al.,
Defendants.

REPORT TO THE COURT AND AFFIDAVIT

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

JOHN BODNER, JR., and SETH D. MONTGOMERY, being first duly sworn, depose and state as follows:

1. This is a report submitted to the Court concerning the meeting with the Canadian government which took place in Ottawa, Canada, on March 3, 1978. The parties and the Court were invited in open Court on February 22, 1978 and again on March 1, 1978, to attend the meeting. Letters of invitation were written to the Court and the parties on February 28, 1978, and are attached hereto and incorporated herein by reference as Exhibits A and B. The Court and UNC declined the invitation in open Court on March 1, 1978, and Detroit Edison declined by telephone on the same date. Indiana & Michigan declined by letter dated March 1, 1978, a copy of which is attached hereto and incorporated herein by reference as Exhibit C.

2. Counsel for GAC attended the meeting and met with officials of the Canadian government. The proceed-

ings during the meeting are outlined in a summary of the meeting prepared by the undersigned affiants and attached hereto and incorporated herein by reference as Attachment 1. The statements contained in the attached summary are true and correct to the best of affiants' recollection.

DATED March 9th, 1978.

/s/ John Bodner, Jr.
JOHN BODNER, JR.

/s/ Seth D. Montgomery
SETH D. MONTGOMERY

Subscribed and sworn to before me this 9th day of March, 1978.

/s/ Anita L. Brown
Notary Public

My Commission Expires: August 24, 1980

CERTIFICATE OF SERVICE

I hereby certify that I caused to be either hand-delivered or mailed a true and correct copy of the foregoing to all opposing counsel of record on this 9th day of March, 1978.

/s/ Seth D. Montgomery

SUMMARY OF MEETING WITH CANADIAN GOVERNMENT

[Filed March 10, 1978 In District Court of the First Judicial District, State of New Mexico, County of Santa Fe]

A meeting was held in Ottawa at the offices of the Department of Energy, Mines & Resources of the Government of Canada on Friday, March 3, 1978, at 3:00 p.m. The purpose of the meeting was to determine whether or not there were any further steps that could be taken by General Atomic Company (GAC), or by Gulf Oil Corporation or Gulf Minerals Canada Limited (GMCL) for the benefit of General Atomic Company, to secure the release or identification of documents or information contained in documents held by GMCL and relating to the international uranium marketing arrangement in which GMCL participated during the period 1972-1975.

The following persons were present:

On behalf of the Government of Canada:

Gordon MacNabb
Deputy Minister
Department of Energy, Mines & Resources

John Runnals
Senior Advisor, Uranium and Nuclear Energy in the Energy Policy Section
Department of Energy, Mines & Resources

John Tait
Assistant Secretary to the Cabinet (Legislation and House Planning)

Joe Stanford
Director General, Bureau of Commercial
and Commodity Relations
Department of External Affairs

Ward Elcock
Legal Adviser to the Department of Energy,
Mines & Resources and an officer of the
Department of Justice

On behalf of General Atomic Company:

W. W. Finley, Jr.
President
General Atomic Company

John Bodner, Jr.
Attorney, Howrey & Simon, Washington, D. C.
Counsel to General Atomic Company

Seth D. Montgomery
Attorney, Montgomery, Andrews & Hannahs,
Santa Fe, New Mexico
Counsel to General Atomic Company

On behalf of Gulf Minerals Canada Limited:

Glen G. MacArthur
Attorney, McCarthy & McCarthy, Toronto, Canada
Counsel to Gulf Minerals Canada Limited.

The meeting convened shortly after 3:00 p.m., and Mr. Finley expressed his appreciation and that of General Atomic Company for the opportunity to meet with the Canadian officials in attendance to explore the problem. He stated that Messrs. Bodner and Montgomery would present the matter but that he would be glad to answer any questions and provide any information that might be pertinent from the standpoint of the management of General Atomic Company.

The Deputy Minister responded that he and the other officials present were pleased to meet with the representatives of General Atomic Company. He inquired as to the purpose of the meeting and referred to the limits under Canadian law on what he and the other officials present could say in response to questions that might be posed. He stated that he had discussed the matter again with his Minister (Hon. Alastair Gillespie) and that he had the full support of the Minister in stating the policy of the Canadian Government. He noted that the Government's policy had been considered and approved by the Cabinet.

Mr. Bodner responded to the Deputy Minister's inquiry concerning the purpose of the meeting and began by outlining the background of developments in the litigation against General Atomic Company brought by United Nuclear Corporation and pending in Santa Fe, New Mexico. He traced the history of the Court's orders requiring production and identification of the "cartel" documents in Canada, culminating in the order entered on the preceding day (March 2, 1978) imposing sanctions and entering a default judgment against GAC. Mr. Montgomery supplemented Mr. Bodner's remarks in outlining the relevant history of the litigation. Mr. Bodner stated that the purpose of the meeting, in light of this background, was to determine whether or not there were any further steps that could be taken by GAC in order to comply, in whole or in part, with the Court's orders. He said that he and Mr. Montgomery had certain specific questions by which they would attempt to accomplish the purpose of the meeting. He also informed the Canadian officials that a report of the meeting would be made to the Court and the parties in the Santa Fe litigation.

Mr. Bodner first inquired whether the representatives of GAC were meeting with the appropriate Government officials in order to accomplish their purpose and whether

there were any other representatives of the Canadian Government that should be present. The Deputy Minister responded by informing the GAC representatives of the identity and capacity of each of the officials who was then present. He stated that the Minister himself had expressed his willingness to attend the meeting but had been prevented from doing so by two Cabinet meetings. Again the Deputy Minister stated that he was fully conversant with the subject of the Canadian documents and the Uranium Information Security Regulations and could state the position of the Government in the absence of the Minister. The Deputy Minister also expressed the view that the officials in attendance were the proper Government representatives to accomplish the purpose of the meeting.

Mr. Bodner then inquired whether identification in any manner of documents covered by the Regulations was permissible, such as by specifying name of author, name of recipient or recipients, date and general subject matter of the document. The Deputy Minister responded that identification of the documents would, in the Government's view, be tantamount to their disclosure or release and that it was not the intention of the Canadian Government to permit identification. Mr. Elcock pointed out that there had not been any judicial interpretation of the Regulations concerning the precise question raised, but that it was his legal opinion that identification was prohibited. The Deputy Minister said that this was certainly the intent of the Canadian Government.

Mr. Bodner next inquired as to the possibility of review of the documents by a third party, such as a "neutral expert", with a view toward determining whether any of the documents could be released. He asked whether, for example, a "neutral expert", approved by the parties and the Canadian Government, could review the documents to determine whether there were any docu-

ments not covered by the Regulations. He asked whether Judge Felter could review the documents in camera with a stipulation that he not divulge the contents. He asked further whether a "neutral expert" could review the documents and certify concerning the absence of certain relevant matters—for example, references to United Nuclear Corporation. He finally asked whether such an expert could compare the documents with those already produced to determine how many had been produced and how many had not.

As to each of the foregoing questions, the Deputy Minister responded that none of the possibilities would be permissible under the Regulations. Each would necessarily involve violations of the Regulations.

Mr. Bodner next inquired whether Canadian citizens could disclose information known to them personally if such information was also contained in documents covered by the Regulations. Mr. Elcock stated that this inquiry raised a close question. If a citizen had no control or possession of documents but had personal knowledge of the facts contained in the documents, such knowledge having been acquired independently of any recitations in the documents, he probably could disclose the information. However, if he were in possession of the documents and had reviewed them, so that he could no longer distinguish between what had been learned from the documents and what had been learned independently of the documents, then he would run the risk of violating the Regulations. Mr. MacArthur then stated that, with respect to employees of GMCL, the question was academic, because there were no present employees of GMCL with independent personal knowledge of whatever facts might be contained in the documents.

Mr. Bodner next inquired whether there was any procedure for seeking amendment or repeal of the Regulations. The Deputy Minister responded by asking whether

Mr. Bodner meant "any procedure" or "any likelihood". Mr. Bodner responded that he meant both. As to the existence of a procedure, the Deputy Minister said that a request could probably be addressed to the Atomic Energy Control Board and that if the Board were so inclined it could initiate a change in the Regulations. However, he pointed out that any such change, to be effective, would have to be approved by the Cabinet. He stated that such approval would not be forthcoming because, in his opinion, the Cabinet had no present intention of changing the policy embodied in the Regulations. In view of this policy, it was stated that any attempt to secure an amendment to or change in the Regulations would be a futile act.

Mr. Bodner next asked whether anyone within the Canadian Government now had authority to waive or construe the Regulations. The Deputy Minister responded in the negative, stating that no one would have such authority without there having first occurred a change in the Regulations initiated by the Atomic Energy Control Board and approved by the Cabinet. Again, it was stated that there was no intention to permit such a change.

Mr. Bodner then inquired as to the possibilities for negotiations between the United States Government and the Canadian Government leading to any release of the documents. Mr. Stanford stated that there were discussions in progress between the two governments (*i.e.*, between the Department of External Affairs in Canada and the Department of State in the United States), but that such discussions did not contemplate the transmission of documents held by companies in Canada to the United States. He further noted that the Canadian Government considered this subject to be a matter of governmental policy to be discussed between the governments concerned and not to be resolved in disputes between private parties.

Returning to the subject of identification of the documents and the possibility of a judicial proceeding to determine whether any identification was permitted, Mr. Montgomery inquired whether any such proceeding was contemplated. Mr. Elcock replied that there was certainly none contemplated by the Canadian Government and none known to be contemplated by anyone else.

Mr. Montgomery then inquired whether there had been any collusion or collaboration between the Government of Canada and Gulf Oil Corporation or Gulf Minerals Canada Limited leading to the promulgation of the Regulations. The Deputy Minister replied, firmly and categorically, that there had been none whatsoever.

Mr. Bodner then asked whether the GAC representatives had overlooked anything as to any reasonable prospect of bringing about a change in the position of the Canadian Government. The Deputy Minister replied that he believed that there were no other avenues available to GAC to change the Government's policy; that the Government's position had been clearly and unequivocally stated on a number of occasions, and that there was no intent to change that position. He stated that the Minister himself had expressed incredulity that the position of the Canadian Government was apparently not comprehended in the United States. The Deputy Minister asked whether General Atomic Company had lodged the documents reflecting the position of the Canadian Government with the Court in Santa Fe, and Mr. Bodner replied that GAC had filed with the Court and the litigants copies of all communications to and from the Canadian Government. He was again asked whether copies of the attachments to these communications, specifically including the Minister's Press Release, with its attachments, in which the policy of the Canadian Government was explained, were provided in the litigation; and Mr. Bodner answered that they had been.

Mr. Bodner then informed the Canadian officials that the question had been raised in the Santa Fe proceedings as to whether pertinent documents had been housed in Canada and removed from the United States to Canada. The Deputy Minister stated that the concern of the Canadian Government was precisely the opposite: that the Government was concerned that some documents had been removed from Canada and sent to the United States when such documents had been transmitted to GMCL on a confidential basis and with the intention that they not be widely disseminated. The Deputy Minister stated that the Canadian Government had been distressed to learn that this policy of confidentiality had not been observed by GMCL as strictly as had been intended by the Canadian Government.

As the meeting reached its conclusion, the Deputy Minister inquired what aspects of the Canadian policy in this matter, if any, were not clear to persons in the United States with an interest in the subject. Mr. Bodner responded by listing four points that he felt were not adequately understood by some persons in the United States:

(1) That it was the clear policy of the Canadian Government that neither production nor identification of documents covered by the Regulations was permitted under Canadian law and national policy;

(2) That the formation and operation of the international marketing arrangement had been required by the Canadian Government and that the actions of the participating Canadian producers had been taken pursuant to directives of the Canadian Government;

(3) That the terms of the arrangement had specifically excluded the United States uranium market from its operation; and

(4) That the matter of the Canadian documents was a subject of on-going discussions between the two governments and that any question concerning the matter should be handled exclusively through that channel.

The Deputy Minister took note of these observations, and generally agreed with the four points. He wondered aloud what else could be done to explain the Government's position in light of all its prior expressions. He illustrated his point by referring, in connection with the inapplicability of the marketing arrangements to the United States, to the directives of the Canadian Government explicitly excluding the United States.

At the conclusion of the meeting, the GAC representatives and Mr. MacArthur thanked the Deputy Minister and the others present and stated that on return to the United States the GAC counsel would give a report of the meeting to the Court and the other parties to the litigation in Santa Fe.

Santa Fe, New Mexico
March 9, 1978

/s/ John Bodner, Jr.
JOHN BODNER, JR.

/s/ Seth D. Montgomery
SETH D. MONTGOMERY

EXHIBIT "A"

HOWREY & SIMON

February 28, 1978

Honorable Edwin L. Felter
District Judge
First Judicial District
Post Office Box 2268
Santa Fe, New Mexico 87501

Re: Canadian Documents—Meeting—Friday, March 3, 1978, Ottawa, Canada

Dear Judge Felter:

Today we have advised Mr. Bigbee and other counsel of record in this proceeding that arrangements have been set up for a meeting with high officials of the Canadian Government to determine whether there is anything further that can be done to gain access to the Canadian documents. The meeting is scheduled for 2:00 P.M. on Friday, March 3 in Ottawa, Canada. We expect to get confirmation tomorrow on the final details of the meeting including who will be in attendance representing the Canadian Government.

You will see from the enclosed letter to Mr. Bigbee that we have indicated the individuals who will attend representing General Atomic Company.

We again wish to invite the Court to attend the meeting with counsel. We believe that it would be most worthwhile for the Court to hear directly the views of the Canadian Government on this subject.

Yours sincerely,

JB:cs
cc: All Counsel of Record

/s/ John Bodner, Jr.
JOHN BODNER, JR.

EXHIBIT "B"

HOWREY & SIMON
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

(202) 783-0800

Santa Fe Office

February 28, 1978

Harry L. Bigbee, Esq.
Bigbee, Stephenson,
Carpenter & Crout
Post Office Box 669
Santa Fe, New Mexico 87501

Re: Canadian Documents—Meeting—Friday, March 3, 1978, Ottawa, Canada

Dear Mr. Bigbee:

Since I made the proposal in open Court on February 22, 1978, to set up a meeting with appropriate high officials of the Canadian government to determine whether there is anything further that can be done to gain access to the Canadian documents, I have been able to make arrangements for such a meeting for Friday at 2:00 p.m. in Ottawa, Canada. The arrangements are still tentative in the sense that I have not received final confirmation that the arrangements are completed, but I am advised I should receive word tomorrow morning. It is expected that top officials of the Department of Energy, Mines & Resources, as well as other officials of the Canadian government, will attend.

As I stated in Court, we invite and urge counsel for all parties to the litigation to attend the meeting and

to participate fully in it. I am sending by separate letter an invitation to the Court to attend the meeting with us. In addition, I would appreciate receiving any suggestions of matters that we should put on the agenda for the meeting to present to the officials of the Canadian government. I will also contact you individually with respect to the final arrangements for attending the meeting.

On behalf of General Atomic Company, I wish to advise you that it is our intention that Mr. Montgomery and I will attend and that we will be joined by the president of General Atomic Company, Mr. W. W. Finley, Jr., of San Diego and by Glen MacArthur, Esq., of McCarthy & McCarthy, Toronto, Canada, counsel for GMCL.

Yours sincerely,

/s/ John Bodner, Jr.
JOHN BODNER, JR.

JB:alb

cc: Hon. Edwin L. Felter
all counsel of record

EXHIBIT "C"

SIMPSON THACHER & BARTLETT
One Battery Park Plaza
New York, N.Y. 10004
(212) 483-9000

Cable Address: XYDSINK, New York

Telex: 129158

March 1, 1978

BY HAND

Seth D. Montgomery, Esq.
Montgomery, Andrews & Hannahs
325 Paseo de Peralta
Santa Fe, New Mexico 87501

Re: UNC v. GAC

Dear Seth:

This is in response to your invitation of yesterday afternoon to attend a meeting with "appropriate high officials of the Canadian government" on Friday of this week.

It is my understanding that since November 9, 1977, the date of the decision of Chief Justice Evans in *Clark* v. *Attorney General*, no official of the Canadian government has had power to authorize the export of any of the "cartel" documents or to construe the regulations, and I do not understand you to suggest otherwise. Under these circumstances, we see no purpose in the meeting,

although it might have been very useful at an earlier date.

Sincerely,

/s/ Rogers Doering
ROGERS DOERING

RD:eb

cc: Hon. Edwin L. Felter
All Counsel of Record

APPENDIX H

[*The New York Times*, Friday, March 3, 1978, p. D1]

JUDGMENT AWARDED TO UNITED NUCLEAR ON URANIUM PRICING

COURT SCOLDS GENERAL ATOMIC

New Mexico Judge, in Tart Decision, Agrees That Gulf Oil Unit Concealed Its Role in International Cartel

By ANTHONY J. PARISI

With words acerbic enough to be heard loud and clear in the Pittsburgh headquarters of the Gulf Oil Corporation, a New Mexico state judge yesterday awarded a default judgment to the United Nuclear Corporation in its heated case against the General Atomic Company, a Gulf affiliate.

The case involves an international cartel that has allegedly raised uranium prices in this country and severely hurt United Nuclear's business prospects. Gulf has admitted that its Canadian subsidiary was involved in the cartel, but the company has repeatedly denied that the cartel had any impact on uranium prices in this country.

Judge Edwin L. Felter, of the State District Court in Santa Fe, ruled in favor of United Nuclear and dismissed a countersuit filed by General Atomic. However, he did not stipulate damages, saying these will have to be established in subsequent proceedings. United Nuclear had sued General Atomic for $2.27 billion.

Rules of Procedure Held

Said Judge Felter: "General Atomic Company has followed a conscious, willful and deliberate policy through-

out this litigation . . . in cynical disregard and disdain of the Rules of Procedure . . . of concealing rather than in good faith revealing the true facts concerning the international uranium cartel in which Gulf Oil Corporation was involved."

General Atomic quickly issued a response. "The decision is outrageous and unprecedented," the company said. "It shows an utter disdain for General Atomic's right to due process and to the facts in this case."

The company indicated that it would immediately appeal the decision and take whatever other steps were necessary "to get this judgment set aside at the earliest possible time."

Earlier this week, General Atomic invited both Judge Felter and United Nuclear attorneys to meet in Ottawa with the Canadian Department of Energy, Mines and Resources and with officials from that country's Justice Department to discuss obtaining Canadian documents pertaining to this case. The company said yesterday that the meeting is still scheduled for Friday and that the invitation still stands.

The Canadian documents were at the heart of Judge Felter's complaints. United Nuclear had charged that General Atomic, through Gulf, shipped documents to Canada to conceal damaging evidence.

Soon after the first flurry of reports about the international cartel, the Canadian Government issued an edict impounding all documents and forbidding any Canadian citizens to testify about the organization.

United Nuclear had also charged that Gulf intentionally destroyed other evidence at its Pittsburgh headquarters.

Gulf has denied both charges.

[*The Washington Post*, Friday, March 3, 1978, p. B7]

GULF OIL APPARENTLY LOSES FIGHT OVER URANIUM DEAL

By WILLIAM H. JONES
Washington Post Staff Writer

Gulf Oil Corp. apparently lost a major legal struggle with a Falls Church company over uranium supply and pricing last night.

In a decision in Santa Fe, N.M., State District Judge Edwin L. Felter issued a default judgment against General Atomic Co., a partnership of Gulf and Scallop Nuclear Inc.

The judge's action effectively ended a trial on the merits of allegations by United Nuclear Corp., a Northern Virginia company, that Gulf and General Atomic entered into an agreement with United on the future supply of uranium in 1973 and 1974 without informing United of projected boosts in uranium prices.

Contracts signed by United and General Atomic called for delivery of uranium to the Gulf partnership at prices of $9 to $14 a pound, more than $30 a pound under recent prices. The 27 million pounds of uranium involved have a current market value of more than $1 billion.

United filed a suit in August 1975, seeking to void the contracts on the grounds that Gulf allegedly was aware that future prices would be much higher because of participation in a world cartel.

Judge Felter said yesterday the trial will continue only to establish potential damages. But a spokesman for General Atomic last night called the court's decision "outrageous and unprecedented," one that shows "utter dis-

dain for General Atomic's right to due process and for the facts in the case."

Lawyers for General Atomic were studying the order yesterday and planning an appeal in court to set aside the default judgment, which declared the 1973 and 1974 contracts to be null and void.

United Nuclear had charged that Gulf and its partner were attempting to monopolize New Mexico's uranium industry. But Gulf said its role as a member of the international cartel of uranium producers did not have any bearing on its United Nuclear contracts, that it was forced to participate in the Cartel by Canada, and that United simply was seeking to get out of contracts.

If the judge's decision is upheld, United Nuclear apparently would have 24 million pounds of uranium to sell to other customers.

Judge Felter dismissed all of Gulf's claims against United Nuclear, asserted that Canada didn't force Gulf's cartel participation and said New Mexico commerce was injured by the contracts.

Gulf officials plan to meet with Canadian officials in Ottawa today in an attempt to get documents about the uranium cartel which have been unavailable for the trial and which United says implicate Gulf's Canadian subsidiary, Gulf Minerals Canada Ltd., in the alleged conspiracy over prices.

[*The Wall Street Journal, Friday*, March 3, 1978, p. 6]

UNITED NUCLEAR WINS JUDGMENT IN URANIUM CASE

Court Rules Partnership of Gulf, Royal Dutch/Shell In Default Over Data

By a Wall Street Journal *Staff Reporter*

SANTA FE, N.M.—A state judge here decided the big pending uranium lawsuit between United Nuclear Corp. and General Atomic Co. in United Nuclear's favor.

Judge Edwin L. Felter, who has been trying the case since last fall, entered a default judgment against General Atomic yesterday afternoon. It cited General Atomic, a partnership of Gulf Oil Corp. and Royal Dutch/Shell Group, for a "willful and deliberate policy throughout this litigation . . . of concealing, rather than in good faith revealing, the true facts concerning the international uranium cartel in which Gulf Oil Corp. was involved . . . from and during 1972 and into 1975."

A spokesman for General Atomic called the decision "outrageous and unprecedented. It shows an utter disdain for General Atomic's right to due process (of law) and for the facts in this case," he said. "General Atomic and its attorneys are planning to take all steps necessary to get this judgment set aside at the earliest possible time," he added.

There wasn't any immediate comment from Gulf Oil.

A Royal Dutch/Shell spokesman couldn't be reached for comment, but the company has refrained from commenting on the New Mexico case throughout.

At stake was United Nuclear's plea to be released from delivering uranium under 1973 and 1974 contracts that involved a total of about 31 million pounds of the mineral and under which some 27.5 million pounds remain to be delivered. United Nuclear also had sought damages of $2.3 billion.

While it appeared that Judge Felter's decision effectively nullified the uranium pacts, the issue of damages will have to be determined later.

In addition to the default judgment against General Atomic, Judge Felter also centered a dozen findings of fact as sanctions for General Atomic's failure to produce evidence in the discovery phase of the case.

The dozen findings are breathtaking in scope and seem certain to hurt Gulf seriously in other existing or potential uranium litigation around the country. Among other things, Judge Felter ruled in the sanctions section of his 22-page judgment order that:

—The Canadian government "encouraged" membership in the cartel by Gulf Oil's Gulf Minerals Canada Ltd. unit "but in no way required or mandated the membership." (The claim of compulsion by the Canadian government has been the centerpiece of General Atomic and Gulf defenses for cartel participation.)

—"Pursuant to an agreement with the cartel, Gulf . . . restricted and withheld production of uranium at Mount Taylor in New Mexico, with the specific intent to limit the supply and control the production of uranium in New Mexico with the independent specific intent to monopolize New Mexico uranium reserves," which account for about 25% of the world's known reserves. (Gulf has vehemently denied that delays in bringing its yet unfinished Mount Taylor uranium mine into production resulted from any such intent.)

—Gulf and General Atomic executed two uranium contracts with United Nuclear that were at the heart of the litigation "as a part of an attempt . . . to monopolize New Mexico uranium supplies . . . is furtherance of the cartel conspiracy to limit the supply and control production and competition with the cartel from a New Mexico uranium producer." (General Atomic and Gulf have repeatedly denied any tie between cartel activities and the United Nuclear contracts.)

—"Gulf and (General Atomic) knew and intended that the cartel and its actions would and did, in fact, substantially raise the price of uranium in the U.S. domestic market." (Gulf has repeatedly insisted the cartel had "little, if any" impact on U.S. uranium prices.)

"Pursuant to the cartel's express inclusion of the U.S. market and U.S. buyers in its price-fixing scheme, Gulf (and other Gulf-controlled units) quoted uranium to U.S. utilities at cartel prices." (Gulf has repeatedly offered several cartel documents that specifically exclude the U.S. market from their subject matter as evidence that the U.S. market never was a cartel target.)

Two Other Suits Cited

As previously reported, Gulf is a defendant in two current uranium suits where plaintiffs Tennessee Valley Authority and Westinghouse Electric Corp. allege they were hurt by the cartel. In addition, Gulf is a prime target of a recently accelerating Justice Department antitrust investigation of the uranium industry.

Late in 1975, United Nuclear filed the Santa Fe suit charging that Gulf, which originally signed the 1973 and 1974 uranium contracts and later assigned them to General Atomic, did so as part of a cartel plot to monopolize New Mexico uranium reserves.

United Nuclear argued that the big purchases were made at low prices, under $12 a pound, by Gulf when the big oil concern was participating in an international cartel of uranium producers that engaged in price fixing, bid rigging and market allocation schemes outside the U.S. between 1972 and 1975.

Gulf knew as a result of its cartel membership that the prices would rise substantially and by executing the big contracts with United Nuclear it kept a large amount of potentially competitive uranium off world markets, United Nuclear argued.

Gulf and General Atomic argued that Gulf cartel participation wasn't at all related to the 1973 and 1974 contracts that they charge United Nuclear wanted to break in order to sell the uranium at much higher prices. Currently, spot uranium is quoted at just under $43 a pound.

A jubilant Harry L. Bigbee, United Nuclear's lead attorney in the case, said late yesterday afternoon that "while I haven't finished reading the judge's decision yet, it appears clear that its impact is to render the 1973 and 1974 uranium contracts null and void."

If he is correct, then United Nuclear would be free to sell the 27.5 million pounds that had remained to be delivered under the contracts. At current prices, that much uranium has a value close to $1.2 billion, or more than triple its value under the contract prices.

The default judgement was in connection with a previously reported dispute over certain cartel documents held by a Gulf Canadian affiliate in Toronto.

Judge Felter late last year ordered General Atomic to produce the documents or to face a finding by him that the facts the documents might prove be presumed as proven in considering the merits of the case.

General Atomic countered that it hasn't the power to direct a unit of one of its partners to do anything and that even if it could, the Canadian concern couldn't comply under Canadian law.

Consent Denied by Canada

In September 1976, the Canadian government, a key organizer of the cartel, prohibited anyone in Canada from disclosing any information on uranium marketing without the consent of the Minister of Energy, Mines and Resources. That permission has been repeatedly withheld in response to General Atomic's requests.

Early this year, Judge Felter modified his earlier order, apparently narrowing its scope by saying that his findings of fact would be limited to matters pertaining to discovery in the case and wouldn't attempt to speak to the merits of United Nuclear's allegations.

He invited briefs on how critical the missing Canadian documents should be considered and what sanctions ought be ordered to reflect General Atomic's refusal to provide them. Both United Nuclear and General Atomic entered their briefs Feb. 15.

United Nuclear called for a default judgment against General Atomic and General Atomic argued that sanctions weren't called for. Judge Felter said in a brief telephone interview yesterday afternoon, only minutes after his judgment, that the decision "doesn't cover the matter of damages. United Nuclear must establish what damages it may have suffered in subsequent proceedings" under the case, Judge Felter said.

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APPENDIX J

IN THE DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

No. 50,827

UNITED NUCLEAR CORPORATION,
Plaintiff,

v.

GENERAL ATOMIC COMPANY, et al.,
Defendants.

[January 23, 1978]

Testimony of Douglas M. Johnson
President of UNC

THE COURT: Now, let me ask you this: Did you have any specific information available to you at that time by which with any degree of certainty you could associate Canada with any particular company or companies as to cartel activities?

THE WITNESS: Yes, I could have at that time.

THE COURT: What was that information, and what companies did you associate it with?

THE WITNESS: To the best of my recollection at this time, your Honor, is what I have described:

That there were those principal ones, Dennison, Rio Algom, El Dorado—

BY MR. BODNER:

Q. GMCL?

A. GMCL-URANERZ partnership. And there may have been others who were either in production, had been in production, or would be coming into production.

APPENDIX K

IN THE DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

No. 50,827

UNITED NUCLEAR CORPORATION,
Plaintiff,

v.

GENERAL ATOMIC COMPANY, et al.,
Defendants.

[December 7, 1977]

Testimony of David F. Shaw
Former President of UNC

* * * *

Q. I will now hand you what has been marked as Defendant's Exhibit T-GA-2530, which is a set of minutes and reports from the Atomic Industrial Forum concerning a committee on mining and milling meeting that was held on February 18, 1972, in Denver. If you will look at the second page of this exhibit, it indicates that it was received on March 14, 1972, by Mr. Johnson. Also looking down the list of those who attended that meeting, you see Mr. Turberville on that list?

A. Yes.

Q. Then on the next page, page 2, under the report of the chairman, the second paragraph under that report indicates that there was a discussion of a recent report of a meeting in Paris of French, Canadian, Aus-

tralian and South African government representatives for the purpose of bringing some order to the international market.

Did you discuss this meeting and what had been discussed at it with Mr. Turberville?

A. I am rather under the impression that I did. My recollection is that I had given some thought to going to this meeting. I was on this committee at the time, I think. I'm not sure about that. But I had given some thought to going to this meeting myself and then I decided I would not. And, as I recall, I actually asked Mr. Turberville to be the one to go to this meeting. And I think that after the meeting was all over with, I talked to him on the telephone to ask him whether or not anything had happened at the meeting that I should know about.

* * * *

Q. Earlier in your testimony on cross-examination with reference to a "Nucleonics Week" article in May of 1971, you said that you felt you had been aware of that at that time. And here in February of 1972 or March of 1972 you became further aware from these reports then of the fact that there was this foreign marketing organization that was being developed, is that right?

A. Yes.

Q. Handing you what has been marked as Defendant's Exhibit T-GA-7042, do you recall seeing this article in the March 16, 1972, issue of "Nucleonics Week" concerning another report on this meeting of uranium officials in Paris?

A. As I indicated in reference to previous print of Nucleonics, I don't remember the specific page and don't recall that I specifically saw this; but it was my custom to read "Nucleonics Week" quite faithfully, and I am reasonably certain that I read this soon after its publication.

Q. You also kept track of matters on the domestic and international scenes in uranium by reading such publications as "Nuclear Industry" and "Energy Week," did you not?

A. In those days I occasionally saw "Energy Week." As I recall, I did not read that as regularly as I did either "Nucleonics Week" or "Nuclear Industry." Those two I always read. I saw excerpts from time to time of "Energy Week" but I didn't go through it every week.

Q. Do you recall this matter of the foreign cartel being reported in "Nuclear Industry" as well as "Nucleonics Week"?

A. I'm sure it was.

Q. It was a matter that was being reported in the industry publications at that time, was it not?

A. Quite widely, yes.

* * * *

Q. I want to return for just a moment to an exhibit that we looked at briefly before lunch. I neglected to ask you one or two questions about that. I am referring to the Defendant's Exhibit T-GA-7042. That, as you will recognize, is the page from the Nucleonics Week issue of March 16, 1972, about which you previously testified, is it not?

A. Yes, it is.

Q. I note it has two articles there, the first one with respect to the uranium officials from four nations meeting in Paris, and the second with respect to Australian uranium companies considering getting together. It goes on to say "in a joint organization to market yellowcake that will be produced in the Northern Territory" and that the federal government, apparently of Australia, supported such a move as desirable for economic development of the territory's uranium potential.

* * * *

Q. In the article it lists the Australian producers. There is no mention of the Canadian producers who are, I believe, referred to in the preceding article. It doesn't refer to Canadian producers, it just talks about the representatives from those countries.

Do you know or do you remember at this time who the Canadian producers were back at the time this article was written?

A. Oh, I remember some of them just by recollection of the names.

Q. Which ones do you recall?

A. The best-known of the Canadian producers were Dennison Mines, a mine or a complex operated by Rio Algom the name of that mining area I don't remember. Eldorado itself operated certain mines in Canada.

I was of course aware of the Rabbit Lake joint venture between Gulf and a German company.

Other names of Canadian producers do not leap to mind.

Q. What about Noranda Mines?

A. I was going to say Noranda and then I wasn't so sure whether Noranda was the name of a company or a mine or whether it was a later organization engaged in exploration that did not have mining operations.

Q. Was Keradamex a company that—

A. That too was a Canadian company but I am not sure that it had operating mines in the Quirk Lake area of Canada or not.

Q. Perhaps I should have said Kerr Addison. Does that ring a bell?

A. Neither one.

Q. Were the other officers of United Nuclear aware as you have just said you were that Gulf's Canadian subsidiary had formed a joint venture with a German company for the production of uranium at Rabbit Lake?

A. I am sure that they were. That had been publicized.

APPENDIX L

IN THE DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

No. 50,827

UNITED NUCLEAR CORPORATION,
Plaintiff,

v.

GENERAL ATOMIC COMPANY, et al.,
Defendants.

[March 7, 1977]

Statement of Donnan Stephenson, Esq.
Counsel to UNC

JUSTICE STEPHENSON: We seek documents within the United States for their production.

* * * *

They tell us that the production of information or documents—production of which is prohibited under our Article 39 of the Netherlands Competition Act or the Canadian Uranium Information Security Regulations or the Canadian Economic Control Act, or the Ontario Business Records Protection Act—we are talking about documents in the United States. The documents in question are the Duquesne documents. The Grand Jury documents.

APPENDIX M

IN THE DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

No. 50,827

UNITED NUCLEAR CORPORATION,
Plaintiff,

v.

GENERAL ATOMIC COMPANY, et al.,
Defendants.

[November 15, 1977]

Testimony of David F. Shaw
Former President of UNC

* * * *

A. When I came back from my December meeting with Mr. Henry, I went almost immediately to a board of directors meeting of Gulf United, that board meeting having been called for December 16.

At this point I summarized to the board where we stood on uranium. At this point Mr. Rolander and I were completely in agreement that the only thing for Gulf United to do is to go out and buy it on the open market; get one or more contracts with third parties for the supply of uranium.

Q. What was the date of this?

A. December 12, 1971.

* * * *

We did agree at that board meeting, however, that we would indeed go forward and would solicit proposals for uranium from everybody, every domestic supplier that we knew of. And we did that. We did go forward, and the invitations went out early in 1972.

APPENDIX N

IN THE DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

No. 50,827

UNITED NUCLEAR CORPORATION,
Plaintiff,

v.

GENERAL ATOMIC COMPANY, et al.,
Defendants.

[December 12, 1977]

Testimony of Douglas M. Johnson
President of UNC

* * * *

Q. After that were there further transactions or occurrences concerning uranium supply for future contracts as between GUNF and Gulf?

A. Yes. There was.

Q. Would you recount those and summarize their course, please?

* * * *

Both of those proposals fell through. They did not result in contracts. And Gulf then in early February of 1971, in the person of Mr. Landis, stated that they would proceed to offer their share of what had been the material for Pennsylvania Power and Light, which was 5.3 million pounds, they would offer that to Gulf United in the form of a firm contract, and that it would available [sic] for whatever bids Gulf United wanted to make.

* * * *

Q. Do you know how the price related to the price of other material purchased by GUNF or sold by Gulf?

* * * *

Those two quantities of uranium, the 5.3 million pounds purchased from Gulf Oil, and the million pounds purchased from Union Carbide, were never committed to a Gulf United business venture during the period through August of 1973, when we sold our interests in Gulf United to Gulf Oil. 6.3 million pounds was still there and uncommitted.

APPENDIX O

Atomic Energy Control Act of Canada
Can. Rev. Stat., ch. A-19 (1970)

An Act relating the development and control of atomic energy

WHEREAS it is essential in the national interest to make provision for the control and supervision of the development, application and use of atomic energy, and to enable Canada to participate effectively in measures of international control of atomic energy which may hereafter be agreed upon; Therefore, His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. This Act may be cited as the *Atomic Energy Control Act.* R.S., c. 11, s. 1.

2. In this Act

"atomic energy" means all energy of whatever type derived from or created by the transmutation of atoms;

"Board" means the Atomic Energy Control Board established by section 3;

"company" means a company incorporated pursuant to paragraph 10(2)(*a*) or (*c*) and any company the direction and control of which is assumed by the Minister pursuant to paragraph 10(2)(*b*);

"member" means a member of the Board;

"Minister" means the member of the Queen's Privy Council for Canada designated by the Governor in Council as the Minister for the purposes of this Act;

"prescribed substances" means uranium, thorium, plutonium, neptunium, deuterium, their respective derivatives and compounds and any other substances that the

Board may by regulation designate as being capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy;

"President" means the President of the Board. R.S., c. 11, s. 2; 1953-54, c. 47, s. 1; 1966-67, c. 25, s. 41; SOR/69-262.

3. (1) There is hereby constituted a body corporate to be called the Atomic Energy Control Board for the purposes hereinafter set out and with powers exercisable by it only as an agent of Her Majesty.

(2) Actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by the Board on behalf of Her Majesty, whether in its name or in the name of Her Majesty, may be brought or taken by or against the Board in the name of the Board in any court that would have jurisdiction if the Board were not an agent of Her Majesty. R.S., c. 11, s. 3; 1953-54, c. 47, s. 2.

4. (1) The Board shall consist of the person who from time to time holds the office of President of the National Research Council of Canada as defined in the *National Research Council Act* and four other members appointed by the Governor in Council.

(2) The members of the Board appointed by the Governor in Council hold office during pleasure and shall be paid such, if any, salaries as may from time to time be fixed by the Governor in Council.

(3) Each member shall receive his travelling and other expenses in connection with the work of the Board.

(4) Three members constitute a quorum.

(5) A vacancy in the Board does not impair the right of the remaining members to act. R.S., c. 11, s. 4; 1966-67, c. 26, s. 13.

5. (1) One of the members shall be appointed by the Governor in Council to be the President of the Board.

(2) The President is the chief executive officer of the Board and has supervision over and direction of the work of the Board and of the officers, technical and otherwise, employed for the purpose of carrying on the work of the Board. R.S., c. 11, s. 5.

6. The Board shall meet at least three times a year in the city of Ottawa on such days as it may determine and may also meet at such other times and at such places as it may determine. 1953-54, c. 47, s. 3.

7. The Board shall comply with any general or special direction given by the Minister with reference to the carrying out of its purposes. 1953-54, c. 47, s. 3.

8. The Board may,

(*a*) make rules for regulating its proceedings and the performance of its functions;

(*b*) notwithstanding any statute or law, appoint and employ such professional, scientific, technical and other officers and employees as the Board deems necessary for the purposes of this Act;

(*c*) with the approval of the Minister, fix the tenure of appointment, the duties and, subject to the approval of the Treasury Board, the remuneration, of officers and employees appointed or employed by the Board;

(*d*) with the approval of the Minister, disseminate or provide for the dissemination of information relating to atomic energy to such extent and in such manner as the Board may deem to be in the public interest; and

(*e*) without limiting the generality of any other provision of this Act, establish, through the National Research Council of Canada or otherwise, scholarships and grants in aid for research and investigations with

respect to atomic energy, or for the education or training of persons to qualify them to engage in such research and investigations. 1953-54, c. 47, c. 3.

9. The Board may with the approval of the Governor in Council make regulations

(*a*) for encouraging and facilitating research and investigations with respect to atomic energy;

(*b*) for developing, controlling, supervising and licensing the production, application and use of atomic energy;

(*c*) respecting mining and prospecting for prescribed substances;

(*d*) regulating the production, import, export, transportation, refining, possession, ownership, use or sale of prescribed substances and any other things that in the opinion of the Board may be used for the production, use or application of atomic energy;

(*e*) for the purpose of keeping secret information respecting the production, use and application of, and research and investigations with respect to, atomic energy, as in the opinion of the Board, the public interest may require;

(*f*) governing cooperation and the maintenance of contact, through international organizations or otherwise, with scientists in other countries or with other countries with respect to the production, use, application and control of, and research and investigations with respect to, atomic energy; and

(*g*) generally as the Board may deem necessary for carrying out any of the provisions or purposes of this Act. R.S., c. 11, s. 9.

10. (1) The Minister may,

(*a*) undertake or cause to be undertaken researches and investigations with respect to atomic energy;

(*b*) with the approval of the Governor in Council, utilize, cause to be utilized and prepare for the utilization of atomic energy;

(*c*) with the approval of the Governor in Council, acquire or cause to be acquired by purchase, lease, requisition or expropriation, prescribed substances and any mines, deposits or claims of prescribed substances and patent rights relating to atomic energy and any works or property for production or preparation for production of, or for research or investigation with respect to, atomic energy; and

(*d*) with the approval of the Governor in Council, license or otherwise make available or sell or otherwise dispose of discoveries, inventions and improvements in processes, apparatus or machines, and patent rights acquired under this Act and collect royalties and fees thereon and payments therefor.

(2) The Minister may, with the approval of the Governor in Council.

(*a*) procure the incorporation of any one or more companies under Part I of the *Canada Corporations Act* for the objects and purposes of exercising and performing on behalf of the Minister such of the powers conferred on the Minister by subsection (1) as the Minister may from time to time direct,

(*b*) assume, by transfer of shares or otherwise, the direction and control of any one or more companies incorporated under Part I of the *Canada Corporations Act* since the 15th day of September 1935, all the issued share capital of which is owned by or held in trust for Her Majesty in right of Canada except shares necessary to qualify other persons as directors and may dele-

gate to any such company any of the powers conferred on the Minister by subsection (1), and

(*c*) procure the incorporation of any one or more companies under Part I of the *Canada Corporations Act* for the purpose of acquiring, holding and exercising, by share holding or otherwise, control of any one or more companies incorporated pursuant to paragraph (*a*) or the control of which is assumed by the Minister pursuant to paragraph (*b*).

(3) The shares, except shares necessary to qualify other persons as directors, of the capital stock of a company incorporated pursuant to paragraph (2)(*a*) or (*c*) or the control of which is assumed by the Minister pursuant to paragraph (2)(*b*) shall be owned or held by the Minister, or by another company, in trust for Her Majesty in right of Canada.

(4) A company is for all its purposes an agent of Her Majesty and its powers may be exercised only as an agent of Her Majesty.

(5) A company may on behalf of Her Majesty contract in its corporate name without specific reference to Her Majesty.

(6) Actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by a company on behalf of Her Majesty, whether in its name or in the name of Her Majesty, may be brought or taken by or against the company in the name of the company in any court that would have jurisdiction if the company were not an agent of Her Majesty.

(7) Nothing in this section affects the application to a company of regulations made under section 9. 1953-54, c. 47, s. 4.

11. Any person who at the time of his employment with the Board held a position in the civil service, or was

an employee within the meaning of the *Civil Service Act* or the *Public Service Employment Act*, continues to retain and is eligible for all the benefits, except salary as an employee in the Public Service, that he would have retained or been eligible to receive had he remained an employee in the Public Service. R.S., c. 11, s. 11; 1953-54, c. 47, s. 5.

12. The *Government Employees Compensation Act* applies to officers and employees employed by the Board and for the purposes of that Act such officers and employees shall be deemed to be employees in the service of Her Majesty. R.S., c. 11, s. 12.

13. Whenever any property has been requisitioned or expropriated under this Act and the compensation to be made therefor has not been agreed upon, the claim for compensation shall be referred by the Minister of Justice to the Exchequer Court of Canada. R.S., c. 11, s. 14.

14. Subject to this Act, the Board is subject to the provisions of the *Financial Administration Act*. R.S., c. 11, s. 15.

15. All expenses under this Act shall be paid out of moneys appropriated by Parliament for the purpose or received by the Board or a company through the conduct of its operations, bequest, donation or otherwise. R.S., c. 11, s. 16.

16. All receipts and expenditures of the Board shall be subject to examination and audit by the Auditor General of Canada. R.S., c. 11, s. 17.

17. All works and undertakings whether heretofore constructed or hereafter to be constructed,

(*a*) for the production, use and application of atomic energy,

(*b*) for research or investigation with respect to atomic energy, and

(*c*) for the production, refining or treatment of prescribed substances,

are and each of them is declared to be works or a work for the general advantage of Canada. R.S., c. 11, s. 18.

18. (1) Every member and every officer and employee of and every person acting under the direction of the Board shall, before acting as such, take before a justice of the peace or a commissioner for taking affidavits, an oath of fidelity and secrecy in the form set out in the schedule.

(2) Every director and every officer and employee of a company shall, before acting as such, take before a justice of the peace or a commissioner for taking affidavits, an oath of fidelity and secrecy in the form set out in the schedule. R.S., c. 11, s. 19.

19. (1) Any person who contravenes or fails to observe the provisions of this Act or of any regulation made thereunder is guilty of an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both, but such person may, at the election of the Attorney General of Canada or of the province in which the offence is alleged to have been committed, be prosecuted upon indictment, and if found guilty is liable to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding five years or to both.

(2) Where an offence described in subsection (1) has been committed by a company or corporation, every person who at the time of the commission of the offence was a director or officer of the company or corporation is guilty of the like offence if he assented to or acquiesced in the commission of the offence or if he knew that the offence was about to be committed and made no attempt to prevent its commission, and in a prosecution of a director or officer for such like offence, it is not necessary

to allege or prove a prior prosecution or conviction of the company or corporation for the offence. R.S., c. 11, s. 20.

20. (1) The Board shall as soon as possible after the 31st day of March in each year and in any event within three months thereof submit to the Minister an annual report in such form as the Minister may prescribe of its affairs and operations during the twelve-month period ending on the 31st day of March and the Minister shall lay the report before Parliament forthwith, or, if Parliament is not then in session, within the first fifteen days of the next ensuing session.

(2) The Board shall, in addition to making an annual report under subsection (1), make to the Minister such other report of its affairs and operations as the Minister may require. 1953-54, c. 47, s. 6.

SCHEDULE

OATH OF FIDELITY AND SECRECY (*Section 18(1)*)

I .... do solemnly swear that I will faithfully, truly and to the best of my judgment, skill and ability, execute and perform the duties required of me as a member (or officer or employee or person acting under the direction, as the case may be), of the Atomic Energy Control Board.

I further solemnly swear that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the Board, nor will I allow any such person to inspect or have access to any books or documents belonging to or in the possession of the Board and relating to its business.

OATH OF FIDELITY AND SECRECY (*Section 18(2)*)

I .... do solemnly swear that I will faithfully, truly and to the best of my judgment, skill and ability, execute and perform the duties required of me as a director (or officer or employee, as the case may be,) of .....

I further solemnly swear that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the said company nor will I allow any such person to inspect or have access to any books or documents belonging to or in the possession of the said company and relating to its business. R.S., c. 11, Sch.

APPENDIX P

Canadian Uranium Information Security Regulations
Stat. O. & R. 76-644 (P.C. 1976-2368)

Short Title

1. These Regulations may be cited as the *Uranium Information Security Regulations.*

Security of Information

2. No person who has in his possession or under his control any note, document or other written or printed material in any way related to conversations, discussions or meetings that took place between January 1, 1972 and December 31, 1975 involving that person or any other person or any government, crown corporation, agency or other organization in respect of the production, import, export, transportation, refining, possession, ownership, use or sale of uranium or its derivatives or compounds, shall

(*a*) release any such note, document or material, or disclose or communicate the contents thereof to any person, government, crown corporation, agency or other organization unless

(i) he is required to do so by or under a law of Canada, or

(ii) he does so with the consent of the Minister of Energy, Mines and Resources; or

(*b*) fail to guard against or take reasonable care to prevent the unauthorized release of any such note, document or material or the disclosure or communication of the contents thereof.

APPENDIX Q

CHAPTER 54

The Ontario Business Records Protection Act
Ont. Rev. Stat., ch. 54 §§ 1-3 (1950)

1. No person shall, pursuant to or under or in a manner that would be consistent with compliance with any requirement, order, direction or subpoena of any legislative, administrative or judicial authority in any jurisdiction outside Ontario, take or cause to be taken, send or cause to be sent or remove or cause to be removed from a point in Ontario to a point outside Ontario, any account, balance sheet, profit and loss statement or inventory or any resume or digest thereof or any other record, statement, report, or material in any way relating to any business carried on in Ontario, unless such taking, sending or removal,

(*a*) is consistent with and forms part of a regular practice of furnishing to a head office or parent company or organization outside Ontario material relating to a branch or subsidiary company or organization carrying on business in Ontario;

(*b*) is done by or on behalf of a company or person as defined in *The Securities Act*, carrying on business in Ontario and as to a jurisdiction outside Ontario in which the securities of the company or person have been qualified for sale with the consent of the company or person;

(*c*) is done by or on behalf of a company or person as defined in *The Securities Act*, carrying on business in Ontario as a dealer or salesman as defined in *The Securities Act*, and as to a jurisdiction outside Ontario in which the company or person has been registered or is otherwise quali-

fied to carry on business as a dealer or salesman, as the case may be; or

(*d*) is provided for by or under any law of Ontario or of the Parliament of Canada. R.S.O. 1960, c. 44, s. 1, *amended.*

2.—(1) Where the Minister of Justice and Attorney General or any person having an interest in a business as mentioned in section 1 has reason to believe that a requirement, order, direction, or subpoena as mentioned in section 1 has been or is likely to be made, issued or given in relation to such business, he may apply to a judge or local judge of the Supreme Court in chambers for any order requiring any person, whether or not such person is named in the requirement, order, direction, or subpoena, to furnish an undertaking and recognizance for the purpose of ensuring that such person will not contravene section 1 and the judge may make such order as he considers proper. R.S.O. 1960, c. 44, s. 2(1), *amended.*

(2) Every person who, having received notice of an application under this section, contravenes this Act shall be deemed to be in contempt of court and is liable to one year's imprisonment.

(3) Every person required to furnish an undertaking or recognizance who contravenes this Act is in contempt of court and in addition to any penalty provided by the recognizance is liable to one year's imprisonment. R.S.O. 1960, c. 44, s. 2(2, 3).

3. The practice and procedure of the Supreme Court applies to every application made under this Act. R.S.O. 1960, c. 44, s. 3.

APPENDIX R

[SEAL]

Office of the Deputy Attorney General

MINISTRY OF THE ATTORNEY GENERAL

18 King Street East
Toronto, Ontario
M5C 1C5

October 25, 1977.

Attention: Glen G. MacArthur, Esq.

Messrs. McCarthy & McCarthy,
Barristers, Solicitors,
P.O. Box 48,
Toronto Dominion Bank Tower,
Toronto-Dominion Centre,
Toronto, Ontario,
M5K 1E6.

Dear Mr. MacArthur:

I acknowledge your letter of October 20th concerning United Nuclear Corporation v. General Atomic Company, et al.

In my view there is no procedure available under Ontario law to obtain "a lawful waiver of or dispensation from" the provisions of The Business Records Protection Act.

Yours very sincerely,

/s/ H. Allan Leal
Deputy Attorney General.

APPENDIX S

[Rule 37 of the New Mexico Rules of Civil Procedure, N.M. Civ. R. 37]

RULE 37. REFUSAL TO MAKE DISCOVERY—CONSEQUENCES.

(a) Refusal To Answer. If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, he may apply to the court in the county where the deposition is taken for an order compelling an answer. Upon the refusal of a deponent to answer any interrogatory submitted under Rule 31 or upon the refusal of a party to answer any interrogatory submitted under Rule 33, the proponent of the question may on like notice make like application for such an order. If the motion is granted and if the court finds that the refusal was without substantial justification the court shall require the refusing party or deponent and the party or attorney advising the refusal or either of them to pay to the examining party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the motion is denied and if the court finds that the motion was made without substantial justification, the court shall require the examining party or the attorney advising the motion or both of them to pay to the refusing party or witness the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees.

(b) Failure To Comply With Order.

(1) Contempt. If a party or other witness refuses to be sworn or refuses to answer any question after

being directed to do so by the court in the county in which the deposition is being taken, the refusal may be considered a contempt of that court.

(2) Other Consequences. If any party or an officer or managing agent of a party refuses to obey an order made under subdivision (a) of this rule requiring him to answer designated questions, or an order made under Rule 34 to produce any document or other thing for inspection, copying or photographing or to permit entry upon land or other property, or an order made under Rule 35 requiring him to submit to a physical or mental examination, the court may make such orders in regard to the refusal as are just, and among others the following:

(i) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental condition of the party, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of physical or mental condition;

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(iv) In lieu of any of the foregoing orders or in adition thereto, an order directing the arrest of any

party or agent of a party for disobeying any of such orders except an order to submit to a physical or mental examination.

(c) Expenses On Refusal To Admit. If a party, after being served with a request under Rule 36 to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof and if the party requesting the admissions thereafter proves the genuineness of any such document or the truth of any such matter of fact, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney's fees. Unless the court finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, the order shall be made.

(d) Failure Of Party To Attend Or Serve Answers. If a party or an officer or managing agent of a party wilfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under Rule 33, after proper service of such interrogatories, the court on motion and notice may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party.

TO THE SHAREHOLDERS OF UNITED NUCLEAR CORPORATION

UNC has won a Sanctions Order and Default Judgment in its suit against General Atomic Company. I am pleased to report this most favorable development in our Company's two-and-one-half-year litigation with General Atomic and Gulf Oil Corporation. At issue have been two uranium supply agreements between United Nuclear and General Atomic. Together they involve some 27 million pounds of uranium, a very substantial fraction of UNC's production capability over the next seven or eight years.

On March 2, 1978, the Trial Court imposed a Sanctions Order and Default Judgment in favor of United Nuclear, based on General Atomic's continuing failure, over a period in excess of two years, to comply with the Court's orders and with agreements made with UNC to produce information under discovery procedures to allow UNC to present its case properly. The effect of the ruling is to void the uranium supply contracts and render them unenforceable. The Court will determine further damage awards, if any, after hearings for that purpose.

This judgment is subject to appeal; however, there is substantial legal precedent for this type of ruling. Should an appeal of this ruling succeed, however, the case will be returned to the same court for a further trial on the merits. We remain confident of our position and fully expect that the case would again be decided in our favor on one or more of the issues — antitrust, fraud and breach of fiduciary duties, and commercial impracticability.

YOU AND YOUR INVESTMENT

What will a successful resolution of this case mean to you and your investment? A very great deal, in both the short and long term.

In the first place, the Default Judgment should enable UNC to sell those 27 million pounds at current or future market prices instead of delivering them at an average price of $11 per pound. Current market price is approximately $43 per pound.

Equally significant is how this resolution will position UNC relative to other U.S. producers of uranium. Approximately 75% of UNC's 100 million pounds in reserves are in developed properties; the mines are already established and in most cases, adequate milling capacity is available. That's the largest percentage of developed uncommitted reserves of any major U.S. producer, an important fact in light of the difficulty many producers are having in licensing and bringing new facilities on line.

You can get a better picture of UNC's market position from the following table:

SCHEDULED PRODUCTION V. DELIVERY COMMITMENTS
(Pounds in thousands)

Fiscal Year Ended March 31	Scheduled Production	Committed Pounds	Average Price/Pound	Uncommitted Production Available for Sale
1979	4,500	2,320	$45.55	2,180
1980	5,200	1,106	23.89	4,094
1981	6,200	1,100	44.24	5,100
1982	6,500	200	59.00	6,300
1983	7,000	100	62.00	6,900

Includes production available for sale based upon the Sanctions Order and Default Judgment.
Excluded are deliveries at the rate of one million pounds per year during the calendar years 1979 through 1982 also known scheduled to the Ambrosia Lake, Anthony, Ivanhoe, Marlow, Ranch and Wyoming. At this time the scheduled deliveries are uncertain because the properties are not yet in production. The price for this material is calculated using a base price plus escalation and additional adjustments. Although this price has not been calculated we currently estimate the price for 1979 deliveries would be approximately $50 per pound.

As you can see, resolution of the litigation on this basis will put UNC in a strong position relative to future earnings growth. It also significantly contributes to accomplishment of the following corporate goals:

LONG-TERM MARKETING

UNC can now effect a long-term marketing plan for uranium, one that balances judicious sales on the spot market and long-term future delivery commitments with escalation provisions that should protect the Company in terms of future production costs and market prices. We believe that the current market price of about $43 per pound will continue to rise slightly over the next two years and more rapidly for a period thereafter.

INCREASING PRODUCTION

The Company is in a sounder position to complete its previously announced uranium production expansion program, which has been prolonged by conditions common to the entire industry. As the table above indicates, our annual production will rise from the present level of 3.8 million pounds to 4.5 million pounds in fiscal year 1979 and to 7 million pounds by 1983.

STRENGTHENING UNC'S CAPITAL STRUCTURE

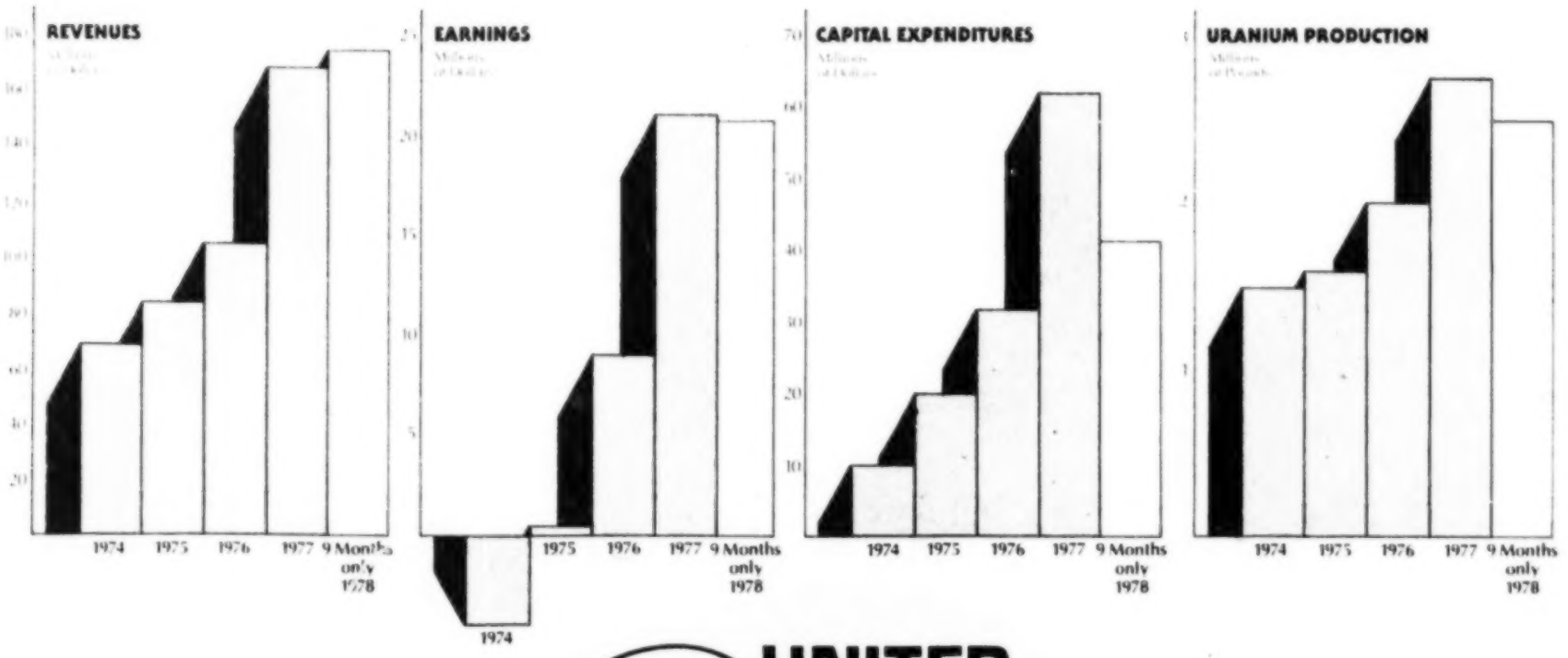
Inevitably, the possibility that we would have to fulfill the supply agreements has adversely affected the Company's position, especially in the financial community. Final resolution of the litigation on this basis will remove that uncertainty. Future financial arrangements should reflect more advantageously the Company's underlying assets and enhanced potential for the future.

The resolution of the litigation is of great importance for the future of UNC. Added to the heartening accomplishments of the last five years — indicated by the updated charts below — it signals a new era of great progress, one which should see UNC's earnings become both more mature and more predictable and the Company's capacity for future development greatly enhanced.

This could be the most favorable event in UNC's history. It adds significantly to our great confidence in the future. I look forward to keeping you informed as it unfolds.

Sincerely,

Keith A. Cunningham
President and Chief
Executive Officer



UNITED NUCLEAR CORPORATION
7700 Leesburg Pike, Falls Church, Virginia 22043
America's Largest Independent Producer of Uranium